United States Court of Appeals

for the Second Circuit

APPENDIX

74-1969-2341-2366

United States Court of Appeals

FOR THE SECOND CIRCUIT

IIT, an International Investment Trust, and GEORGES BADEN, JACQUES DELVAUX and ERNEST LECUIT, as Liquidators for IIT, an International Investment Trust,

Plaintiffs-Appellees-Cross-Appellants,

—against—

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants-Appellants-Cross-Appellees,

and

WALTER BLACKMAN,

and

ROBERT L. VESCO, MILTON F. MEIS, NORMAN LeBLANC and STANLEY GRAZE,

Defendants.

APPENDIX

(Volume I—pages 1A to 478A)

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UNITED STATES COURT OF APPEALS
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PAGINATION AS IN ORIGINAL COPY

INDEX

	PRINTED PAGE
Docket Entries in the United States District Court for the Southern District of New York.....	1A
Order per Stewart, J., dated September 3, 1974 permitting Vencap to issue checks in the total sum of $40,000 in connection with obtaining the so-called Cameroon concession.....	973A
Summons.....	7A
Complaint.....	8A
Order to Show Cause with temporary restraining order	30A
Affidavit of Eugene R. Anderson, Esq. in support of motion for temporary restraining order brought on by order to show cause, sworn to on June 7, 1974	39A
Exhibits to the June 7, 1974 affidavit of Eugene R. Anderson, Esq.....	53A
Affidavit of Leon B. Kellner, Esq., in support of service of the Order to Show Cause, sworn to on June 7, 1974.....	117A
Order per Stewart, J., dated June 14, 1974.....	119A
Affidavit of David G. Taylor, Esq., sworn to on June 13, 1974.....	121A
Affidavit of Charles E. Murphy, Esq., sworn to on June 13, 1974.....	137A
Affidavit of Richard C. Pistell, sworn to on June 13, 1974.....	140A
Order per Stewart, J., extending the temporary restraining order entered on June 10, 1974 until July 1, 1974; and order per Stewart, J. extending the temporary restraining order entered on June 10, 1974 until July 5, 1974.....	148A
Order per Stewart, J., dated July 3, 1974.....	149A

INDEX

	PRINTED PAGE
A letter dated July 2, 1974 from Eugene R. Anderson, Esq. to the Honorable Charles E. Stewart	151A
Affidavit of Peter G. Wood, sworn to on July 23, 1974	154A
Affidavit of Eugene R. Anderson, Esq., sworn to on July 30, 1974	156A
Supplemental Order per Stewart, J., dated August 2, 1974	161A
Opinion and Order of Stewart, J., dated July 3, 1974	947A
Order per Stewart, J., dated September 30, 1974, modifying Opinion and Order, dated July 3, 1974	971A
Order per Stewart, J., dated September 30, 1974, unsealing the findings of fact and conclusions of law as well as other documents pertaining to the case	975A
Order to Show Cause, dated September 10, 1974, together with supporting affidavit of Leon B. Kellner, Esq., sworn to on September 27, 1974 and the supporting affidavit of Eugene R. Anderson, Esq., sworn to on July 30, 1974	976A
Notice of Settlement of Order together with supporting papers, dated October 23, 1974	948A
Affidavit of Leon B. Kellner, Esq., sworn to on the 31st day of October, 1974	990A
Order of Stewart, J., dated November 22, 1974	992A
Notice of Appeal of defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Richard C. Pistell, dated July 8, 1974	994A
Notice of cross-appeal of plaintiffs IIT, Georges Baden, Jacques Delvaux and Ernest Lecuit as Liquidators for IIT, dated September 27, 1974	996
Notice of Appeal of Defendants Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe, dated October 15, 1974	998A

PLAINTIFF-WITNESSES

	PRINTED PAGE
Bruno Lederer	
Direct	[illegible]
Cross	[illegible]
Redirect	201A
Recross	209A
	212A
John Andrew Rouse	
Direct	213A
Cross	224A
Jacques Delvaux	
Direct	285A
Cross	287A
Redirect	295A
Michael Donovan	
Direct	298A
Cross	326A
Redirect	353A
Recross	362A
Jacob Ziegel	
Direct	366A
Cross	399A
Robert T. Cassel	
Direct	416A
Cross	456A
Redirect	477A

DEFENDANTS' WITNESSES	PRINTED PAGE
Richard C. Pistell	
Direct	24[illegible]A
[illegible]	[illegible]34A
[illegible]	
[illegible]	499A
Cross	545A
Redirect	663A
Charles Murphy	
Direct	665A
Cross	677A
Richard C. Pistell	
Direct	694A
Cross	725A

IIT, et al., v. Vencap, et al.

LIST OF PLAINTIFFS' EXHIBITS

Number	Description	Page
1.	Order of Appointment of the Liquidators by the Luxembourg Court.....	1001A
2.	Prospectus of IIT, 1970.....	1010A
3.	Annual Report of IIT, 1971.....	1034A
4.	Fund Regulations of IIT.....	1055A
5.	Prospectus of IOS Investment Program, 1970.....	1058A
6.	Computer printout of re: stockholders of IIT..	1082A
7.	Computer printout of re: stockholders of IIT..	1126A
8.	Inter-office memo of Clarkson, Gordon & Co.....	1176A
9.	Inter-office memo of Clarkson, Gordon & Co.....	1179A
10.	Minutes of Stockholders' Meetings of Vencap....	1180A
11.	Minutes of Directors' Meetings of Vencap.....	1240A
12.	Transcript of Pistell testimony at Hearing on Preliminary Injunction in SEC v. Vesco, et al., 72 Civ. 5001.....	1279A
12-259	First meeting of incorporators of Vencap, 7/4/72.	1589A
12-260	Vencap Directors' Meeting, 8/29/72.....	1598A
12-261	Vencap Shareholders' Meeting, 8/31/72.....	1601A
12-262	Letter from IIT Management to Vencap, 9/29/72..	1605A
12-263	Purchase Agreement between Vencap and I.O.S. Insurance, 9/29/72.....	1612A
12-265	Warrants to IIT for purchase of Vencap Redeemable Preference Shares, 10/9/72.....	1626A
12-266	Vencap Certificate of President and Secretary.	1630A

Number	Description	Page
12-267	Letter from IIT Management to B.C.B., 10/9/72.....	1632A
12-268	Copy of certificate for 30,000 Redeemable Preference Shares of Vencap to IIT.....	1633A
12-269	Release by Vencap to San Cristobal, IIT, Trident Bank Ltd., Inter-American Capital S.A.....	1635A
12-272	Sale Agreement for Vencap common shares between Reincourt and Pistell, 1/17/73.....	1636A
12-273	Mutual release between Reincourt and Pistell, 1/17/73.	1638A
12-274	Resolution of Directors of Vencap, authorizing pledge to Handelskredit Bank for loan to Intercapital, N.V., 1/19/73.....	1640A
12-275	Certificate and Specimen Signature of Vencap.....	1642A
12-276	Pledge Agreement between Handelskredit Bank and Intercapital, N.V., as of 2/1/73.....	1644A
12-277	Trust Agreement dated February 1, 1973 between Vencap and Handelskredit Bank.....	1649A
12-277A	Option Agreement between Pistell and Vencap for purchase of shares of Pomaikai Oil or Flag-Redfern, 3/26/73.....	1650A
12-278	Three page memorandum from Vencap to International Capital Investments (Sterling) Limited.	1654A
12-296	Agreement between Vencap and F.O.F. Prop to purchase 500,000 shares of Chibex, 8/29/72.....	1658A
14	2 Vols. of Pistell testimony at Deposition in SEC v. Vesco, et al., 72 Civ. 5001.....	1660A
14-2	Letter from Pistell to LeBlanc at Global Holdings Limited, 3/27/73.....	1869A
14-3	Letter from Pistell to LeBlanc at Global Holdings Limited, 4/2/73.....	1870A
14-4A	Unaudited Vencap Limited Balance Sheet on stationery of C.P.A. firm, as of 4/30/74.....	1871A
14-5	Certified copies of assignments of undivided interest in oil, gas and mineral leases from Intervent, Inc. to Newmark American Petroleum Corp., 3/21/74.....	1872A
14-7	Certified assignment of undivided interest in oil, gas and mineral leases from Flag-Redfern Co. to Intervent Inc., 11/17/73.....	1927A

Number	Description	Page
14-13	Ryder Scott Co. appraisal of leasehold interests of Bintloff sent to Flag-Redfern Oil Co., 8/1/73....	1931A
14-17	Letter from Glavin to Noah Block at S.E.C., 4/15/74.	1935A
14-18	Letter from Glavin to Noah Block at S.E.C., 5/1/74.	1937A
14-19	Letter from Glavin to Noah Block at S.E.C. submitting list of investments and cash on hand as of 4/30/74, 5/3/74.....	1939A
14-22	Letter from Newmark American Petroleum Corp. to Intervent Inc., undated.....	1945A
14-23	Pledge agreement between Vencap, Ltd. and Intercapital, N.V., as of 11/15/73.....	1946A
14-24	Pledge agreement between Handelskredit-Bank A.G. and Intercapital N.V., as of 11/15/73.....	1950A
14-25	Loan agreement between Handelskredit-Bank A.G. and Intercapital N.V., 11/15/73.....	1953A
14-26	Trust agreement between Vencap Ltd. and Handelskredit-Bank A.G., 11/15/73.....	1955A
14-27	Promissory note from Intervent Inc. (by Pistell) to Intercapital, 11/15/73.....	1957A
14-28	Vencap Ltd. consent signed by W. Blackman, undated.	1958A
14-29	Option Agreement between Vencap Limited and Pistell for purchase of shares of Pomaikai Oil or Flag-Redfern, 3/26/73.....	1960A
14-29A	Employment Agreement dated May 21, 1973 between Vencap and Pistell.....	1962A
14-30	Financing agreement between Vencap Limited and Intercapital N.V. for loan up to $750,000, 8/3/73.....	1970A
14-31	Letter from Vencap Limited by W. Blackman to Intercapital N.V. by Pistell and attached is (1) Promissory Note in amount of $75,000 from Conservative Capital to Vencap and (2) option to Intercapital N.V. for purchase of Chibex stock.....	1972A
14-32	Letter from Bahamas Commonwealth Bank Limited to Carson Lawson & Co., 4/9/73.....	1976A
14-33	Vencap Corporate documents.....	1977A

Number	Description	Page
14-34	Copy of Register of Members of Vencap.....	2015A
14-35	Vencap General Ledger.....	2017A
14-36	Intervent Corporate Records.....	2104A
14-37	Intervent Balance Sheet as of 4/30/74; Letter from Intervent to Pistell; Promissory Note from Pistell to Intervent; Option Agreement between Intervent and Pistell for house in Bahamas.....	2146A
14-38	Itinerary of Pistell - 5/1/73 - 2/28/74.....	2153A
14-39	Flag-Redfern annual report.....	2164A
14-40	Document from Corporate Trust N.V. giving Pistell Power of Attorney to act for Intercapital N.V....	2182A
14-41	Records of securities purchases from various brokerage firms.....	2183A
14-42A	2 Vencap checkbooks.....	2792A
14-42B	Cancelled checks and Statements from Vencap account at B.C.B.....	2823A
14-42C	Cancelled checks and Statement for Vencap account at Bank of Commerce, New York.....	
14-42D	Vencap checkbook for account at Bank of Commerce.	3091A
14-42E	Cancelled checks and Statement for Vencap Account at Bank of Nova Scotia (Nassau Branch), Account #6600-35.	3173A
14-42F	Cancelled Checks, Statements and Bank Resolution for Sangin Incorporated account at Bank of Commerce, New York.....	3270A
14-42G	Statements for Intercapital, N.V. account at Mellon Bank, N.A. Pittsburgh, Pennsylvania, Account #168-2242.	3280A
14-42H	Certificates of Deposit, Statements and Bank Resolution for Vencap account at Chase Manhattan Bank, London.	3287A
14-42I	Statements and Certificates of Deposit for Vencap Call Account at Bank of Nova Scotia (Nassau).....	3318A
14-43	Option to Intercapital from Conservative Capital to purchase Chibex shares, 11/25/73.....	3366A
14-44A	General Ledger of Intercapital.....	3369A

Number	Description	Page
14-44B	Cancelled Checks, Statements and Checkbooks for Intercapital account at Bank of Commerce, New York, Account #40-08408-6.....	3382A
14-45	Checkbook for Intervent Inc. account at Bank of Commerce and General Ledger of Intervent Inc.....	3452A
14-46A	Itinerary of Pistell - 5/1/73 - 3/22/74.....	3464A
14-46B	Bills.....	3467A
15	Testimony of Pistell at S.E.C. deposition.....	3877A
16	Letter from Taylor to S.E.C., 5/17/74.....	3959A
16-1	Statement of amounts charged to Pistell as advances and salary.....	3963A
16-2	Letters from David Taylor to Willkie Farr & Gallagher 9/21/72, 10/3/72, with attachments.....	3965A
16-3	Agreement between Vencap and Walter Blackman, 5/22/73, restricting transfer of Vencap stock, witnessed by Taylor.....	3977A
16-4	Employment Agreement between Vencap and Blackman as of 3/17/73, dated 5/22/73.....	3983A
16-5	Promissory Note from Pistell to Intercapital in the amount of $590,000, 2/1/73.....	3988A
16-6	Receipt from B.C.B. for Vencap Shares delivered to B.C.B. 2/23/73.....	3989A
16-7	General Power of Attorney from Pistell to Taylor and Murphy.....	3990A
16-8	Intercapital N.V. bank statement and check from Pistell to Intercapital.....	3992A
16-9	Telex from "Dr. H." to Taylor acknowledging receipt of $600,000, 1/9/73.....	3993A
16-10	Letter from Handelskredit Bank to Intercapital acknowledging transfer of $590,000 to Intercapital account at Bank of Commerce.....	3994A
16-12	Two advices from Handelskredit Bank to Intercapital reflecting transfer of $700,000 to Intercapital...	3995A

Number	Description	Page
16-14	Check from Vencap to Intercapital 3/20/74 and three credit advices transferring fund from Vencap account to Intercapital account at Bank of Commerce.....	3997A
16-15	Bill from Field, Tiger, Krell & Werber to Pistell, in the amount of $20,000, 7/31/73.....	3999A
16-16	Statement of Minera Tangamanga.....	4000A
16-17	Telex from Pistell to Dr. Heiber concerning pledge of Pomaikai shares to Handelskredit Bank, 4/6/73.....	4002A
16-18	Letter from Pistell to Schweickart & Co. concerning shares of Lincoln American Corporation.....	4003A
17	Letter from Taylor to S.E.C., 6/3/74.....	4006A
17-2	Letter from B.C.B. to Carson Lawson acknowledging release of Vencap shares, 4/9/73.....	4009A
17-3	Check from Blackman to Pistell in amount of $2,000. 5/21/73.....	4011A
17-6	Cancelled checks on account of Vencap at Bank of Nova Scotia (Nassau), signed by Blackman.....	4012A
17-7	Checkstubs on Vencap account at Bank of Nova Scotia (Nassau).....	4039A
19	American National Bank and Trust ("ANBT") statements for IIT custodian account.....	4046A
20	Telex from Raymond Fell to Lamborary (ODB (Lux)), cc: ANBT: Re: $3,000,000 to Vencap.....	4104A
21	Letter dated October 4, 1972 from IIT Management to ODB Lux, cc: ANBT, Re: $3,000,000 to Vencap....	4105A
22	Telex dated October 6, 1972 from ODB (Lux) to ANBT, Re: $3,000,000 to Vencap.....	4106A
23	Telex dated October 10, 1972 from ANBT to ODB (Lux); Re: Balance in ODB account.....	4107A
24	Telex from ANBT to Ian Rowe, Re: $3,000,000 to Vencap.	4108A

Number	Description	Page
25	Telex dated October 19, 1972 from Fundservice, Toronto to ANBT.....	4109A
26	ANBT Charge Slips dated October 6, 1972.....	4110A
27	Copy of the certificate for Vencap Preference Shares.....	4111A
28	Copy of the Warrant to purchase Vencap Preference Shares.....	4113A
30	Breakdown of Vencap monthly securities transactions.	4116A
31	List of checks drawn on Vencap's and Intercapital's bank accounts.....	4118A
32	Summary of expenses and salary advances for RCP.	4148A
33	Breakdown of Vencap's securities transactions.....	4149A
35 A	Willkie Farr correspondence.....	4155A

DEFENDANTS' EXHIBITS

C	Agreement - 30 Nov. 1973 - Vencap-Kokdemir-Sangin	4156A
D	Agreement - 15 March 1974 - Vencap-Kokdemir-Sangin	4161A
E	Pledge Agreement - 30 Nov. 1973 - Vencap-Kokdemir	4164A
F	Telegram from Kokdemir.....	4168A
G	Report Gold in Eastern Cameroon - April 1974.....	4169A
H	Telex from Mase dated 5/6/74.....	4233A
J	Copy of Dow Jones Ticker article	4235A
K	Wall Street Journal article	4236A
L	Bahamas Commonwealth Bank - $3,000,000 credit to Vencap.	4237A
M	Transfer of securities from Bahamas Commonwealth Bank to American National Bank & Trust of New Jersey.	4238A

Number	Description	Page
N	Letter dated October 9, 1972 IIT Management to Bahamas Commonwealth Bank Ltd. - Instruction to pay $3,000,000 to Vencap.....	4239A
O	Letter dated May, 1973 to RCP from Vencap re $150,000 fee.....	4240A

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE STEWART

1A

Pltff. Jury demand date: 6/10/74

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
IIT, an International Investment Trust and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIt, an International Investment Trust v VENCAP, LTD INTERVENT, INC. INTERCAPITAL N.V. RICHARD C. PISTELL WALTER BLACKMAN ROBERT L. VESCO MILTON P. MEISSNER NORMAN LEBLANC STANLEY GRAZE CHARLES E. MURPHY JR. DAVID TAYLOR and HAVENS WANDLESS, STITT & TIGHE	For plaintiff: Anderson Russell Kill & Olick 600 Fifth Av.N.Y.10020 541-8100 For defendant: Havens,Wandless,Stitt & Tighe 99 Park Ave,NYC 10016 986-5550 Curtis,Mallett-Prevost,Colt and Mosle 100 Wall St,NYC 10005 248-8111 (defts.Murphy,Jr.,Taylor and Havens Wandless,Stitt and Tighe)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed X	Clerk		6/10/74	Anderson K	15 —	
			6/11/74	[illegible]		15 —
6 mailed	Marshal		6/24/74	[illegible]	5 —	
			7/3/74	[illegible]		✓ —
s of Action: Sec.Act.1933	Docket fee		7/4/74	[illegible]	5 —	
$13,000,000			7/11/74	[illegible]		5 —
	Witness fees		10/4/74	[illegible]	5 —	
			10/17/74	[illegible]		5 —
on arose at:	Depositions					

T, an international Investment Trust etc. v. VENCAP LTD. ET AL.

2A

74 CIV. 2504

DATE	PROCEEDINGS	Date Order Judgment N
e 10-74	Filed Complaint and issued summons.	
10-74	Filed order appointing person to serve process pursuant to Rule 4,FRCP--Ordered that Delia M annix,Barbara Zuckerman and Susan O'Donnell serve the summons and complaint upon the defts. Clerk m/n	
n. 11-74	Filed pltfs. OSC with a temp. restraining order--ORDERED that defts. Vencap,Ltd. Intervent,Inc.,Intercapital NV,Richard Pistell,Charles Murphy,Jr. David Taylor, and Havens Wandless,Stitt and Tighe(Pistell Group) show cause on June 14,1974 in Rm. 1305 at 10:30am why a prel. inj. should not be issued enjoining and restraining the Pistell Group,etc.;Ordered that pending the hearing of this motion,said defts. are enjoined from expending any control over the present & future assets of IIT, Vencap, Intervent and Intercapital;Further Ordered that pltfs. shall file an undertaking in the amt. of$10,000 by June 11,1974 at 4pm for paymnet of costs and damages as may be incurred by the Pistell Group;Ordered that service of this OSC & the papers upon which it is granted by the attys. for the pltfs. on or before June 11,1974 by 4pm,etc. as indicated. Stewart,J.	
n.11-74	Filed pltfs. memoramum in support of motion for TRO.	
13-74	Filed deft. Richard Pistell affdt. in opposition to motion made by pltf. for a prej. injunction and for the appointment of a temp. receiver of the subject.	
13-74	Filed deft. Charles Murphy,Jr. affdt. in opposition to pltfs. motion for prel. injunction.	
13-74	Filed memorandum of law on behalf of defts. Vencap,Ltd.,Intervent Inc.,Intercapital NV,Richard Pistell,Charles Murphy,Jr.,David Taylor and Havens,Wandless,Stitt and Tighe in opposition to preliminary injunction appointment of a receiver and granting of other relief.	
13-74	Filed deft. David Taylor affdt. in opposition to motion for prel. inj.	
18-74	Filed ORDER--An order having been entered on June 10,1974 at 5:15pm one paragraph which stated as indicated,pltfs. counsel having moved to modify said paragraph as follows:ORDERED that effective June 14,1974 at 10:30am,the above quoted paragraph be modified to read as indicated Stewart,J. m/n	
20-74	Filed order--Ordered that this Court;s said order of June 10,1974 is further modified and vacated as of June 14,1974 to the extent as indicated.Stewart,J. m/n	
-11-74	Filed Undertaking on Injunction - $10,000.00 - National Surety Co.	
-17-74	Filed pltf's notice pursuant to Rule 44.1	
-24-74	Filed endorsement that the T.R.O. entered herein on June 10, 1974 is hereby extended to July 1, 1974 -- Stewart, J. m/n	
26-74	Filed pltfs. memorandum of law regarding the length of time the district court can continue a temporary restraining order to rule 65(b) FRCP.	
27-74	Filed proposed findings of fact and conclusions of law of certain defts.	
27-74	Filed defts.memorandum of law.	
2-74	Filed defts. affdt. of David Taylor in opposition to a motion for prel. injunction by pltf. and an appointment of a temp. receiver in this action.	
1-74	Filed memo end. on pltfs. OSC dated Jun 11,1974---The TRO entered on June 10,1974 is ext. to July 5,1974. So ordered,Stewart,J. m/n	
28-74	Filed memorandum of law by defts.Vencap,Ltd.,Intervent,Inc.,Intercapital NC,Richard Pistell,Charles Murphy,Jr.,David Taylor and Havens,Wandless, Stitt and Tighe regarding the length of time the district court can continue a tro and in opposition to therelief requested in pltfs. applicat of June 27,1974.	

(see Pg. -3-)

C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord Judgment
1 5-74	Filed one envelope sealed by order of the court and placed in the vault in the Cashier's office,Rm.602. This envelope contains OPINION# 40932 and shall not be opened until further order of this Court. Stewart,J.	
9-74	Filed stip. and order that the time of defts. Vencap,Intervent,Intercapital Richard Pistell,Charles Murphy,Jr.,David Taylor and Havens,Wandless,Stitt and Tighe to answer complaint is ext. to Aug. 1,1974.So ordered, Stewart,J.	
1 3-74	Filed pltfs. 1st request for production of documents to deft. Intervent Inc.	
ul 3-74	Filed pltfs. 1st request for production of documents to defts. David Taylor,Charles Murphy,Jr. and Havens,Wandless and Tighe and Stitt.	
1 3-74	Filed pltfs. 1st request for production of documents to deft. Vencap,Ltd.	
1 3-74	Filed pltfs. 1st request for production of documents to deft. Intercapital NV	
1. 11-74	Filed one envelope sealed by order of the court and placed in the vault in the Cashier's office,Rm.602. This envelope contains one transcript(undated) and shall not be opened until further order of this Court. Stewart,J.	
9-74	Filed defendants Vencap. Ltd., Intervent, Inc., Intercapital N.V. and Richard C. Pistell's notice of appeal from an order of July 5-74 granting prelim. injunction which enjoined defendants.(Notice mailed to Anderson Russell Kill & Olick,P.C. 600 5th Ave., NYC)	
ly 12-74	Filed order that the opinion and order of this Court of July 3-74 remain sealed, that defts notice of appeal, docket sheet and the index of the record be sealed and the Clerk is to transfer the impounded documents inter alia to the Court of Appeals. Stewart,J.	
11-74	Filed order--ORDERED that the time which Arnold Burns,the receiver appointed in this action by order of July 3,1974,shall be required to file his oath and the undertaking is ext. to July 15,1974.Stewart,J. m/n	
12-74	Filed defts. affdt. of Charles Murphy,Jr. in opposition to pltfs. motion for prel. injunction and for appt. of a temp. receiver.	
ul 18-74	Filed one envelope sealed by order of the court dated July 18,1974 and placed in vault,Cashier's office,Rm.602. This envelope containe order dated Jul. 18,1974.	
22-74	Filed transcript of record of proceedings dated June 10,1974.	
22-74	Filed transcript of record of proceedings dated June 14,17,18, 19,20,24, 1974.	
2-74	Filed pltfs. affdt. of service of Leon Kellner that on June 11,1974 he served copies of the osc with restraining order on the following as indicated.	
2-74	Filed pltfs. affdt. of service of Delia Mannix that on June 11,1974 she served the following by mail OSC with restraining order as indicated.	
1 10-74	Filed pltfs. notice to take deposition of deft. Vencap,Ltd. on Aug. 13,1974.	
17-74	Filed pltfs. notice to take deposition of deft. Vencap,Ltd. on Aug. 20,1974.	
17-74	Filed pltfs. notice to take deposition of Havens,Wandless,Stitt and Tighe on Aug. 27,1974.	

(over)

DATE	PROCEEDINGS	Date Ord Judgment
17-74	Filed pltfs. notice to take deposition of Havens,Wandless,Stitt and Tighe on Sept. 4,1974.	
17-74	Filed pltfs. notice to take deposition of Richard Pistell on Sept. 10,1974.	
24-74	Filed one envelope containing undated transcript of proceedings ordered sealed and impounded & plaeed in room 602 vault.	
15-74	Filed notice that the record on appeal has been transmitted and certified (under seal) to the US Court of Appeals.	
. 28-74	Filed transcript of record of proceedings dated July 31, 1974.	
.4-74	Filed order--ORDERED that deft. Vencap, Ltd. be permitted to issue checks in the total sum of $40,000 in connection with obtaining the so-called Cameroon concession. Stewart,J.	
.30-74	Filed pltfs. OSC--ORDERED that certain defts. show cause on Oct. 1,1974 in Rm.2602 at 3:30pm why an order should not be made staying the order of this court dated Sept. 3,1974 permitting Vencap to issue checks inthe amt. of $40,000,etc.;ORDERED that personal service of a copy of this order be served upon the certain defts. attys. by Sept. 30,1974.Stewart, J.	
.1-74	Filed order--The findings of fact and conclusions of law a s well as all other documents pertaining to this case which were ordered sealed are hereby released,except for the in camera testimony of June 20,1974 at transcript pages 672 through 700-A which has been withdrawn by deft. So ordered,Stewart,J. m/n	
. 1-74	Filed order amending opinion and order dated July 3, 1974.So ordered, Stewart, J. m/n	
2-74	Filed pltfs. notice of appeal to the USCA from an order entered on Sept. 3,1974 permitting Vencap,Ltd. a deft. to issue checks in the amt. of $40,000 in connection with obtaining the so called cameroon concession.(copies mailed).	
9-74	Filed stip. and order that defts. Charles Murphy,Jr.,David Taylor and Havens,Wandless,Stitt and Tighe are now represented by: Curtis,Mallett,Prevost,Colt and Mosle 100 Wall St,NYC 10005 Stewart,J. (w/Judge)	
10-74	Filed bond#2446081 for the undertaking on injunction in the amt. of $50,000 by the National Surety Corp.	
15-74	Filed defts. Murphy,Jr.,Taylor and Havens,Wandless,Stitt and Tighe notice of appeal to the USCA from an order entered on Oct. 1,1974 granting pltfs. motion for prel. injunction and ordering defts. Vencap,Intervent,Intercapital and Richard Pistell from transferring any assets of IIT,Vencap,Intervent & Intercapital until the action is finally determined,etc.(copies mailed).	
14-74	Hearing on prel. injunction begun.	
17-74	" " " " contd.	
18-74	" " " "	
19-74	" " " "	
20-74	" " " "	
21-74	" " " "	
24-74	" " " " and concluded Decision reserved.	
1-74	Filed order--ORDERED that Arnold Burns,receiver,is authorized to hissue checks up to an aggregate amt. of $5,000 during the period commencing with the date hereof,and terminating 3 months therefrom to satisfy everyday administration expenses. Stewart,J. m/n	

(see pg. -5-)

110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord Judgment
t.29-74	Filed order--ORDERED that Arnold Burns is authorized to cause Vencap,Ltd. to loan $22,967.12 to Sangin,Inc. to be utilized to reimburse H. Jeff Kikdemir,Pres. of Sangin,Inc. for salary from July 1 through Nov. 30,1974 as well as his business expenses from July 1 through Sept. 20,1974. Stewart,J. m/n	
1-74	Filed order--ORDERED that Arnold Burns is authorized to retain the firm of Laventhol,Krekstein,Horwath and Horwath of 919 3rd Ave, NYC as auditors to render accting. services in connection with the assets of IIT,Vencap,Ltd,Intervent and Intercapital,NV; ORDERED that the compensation of said firm for services rendered shall be fixed by this court,upon application therefor.Stewart,J. m/n	
t.15-74	Filed notice of entry of substitution of attys. as per order dated Oct.9,1974,by defts. Murphy,Taylor,and Havens,Wandless,Stitt and Tighe.	
.21-74	Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA this date.	
-14-74	Filed affdvt. and order authorizing person to serve process on Bahamian defendants. -- Clerk.	
21-74	Filed pltfs. affdt. of Eugene Anderson.	
22-74	Filed affdt. ofservice of Leon Kellner that on July 31,1974 he personally served a true copy of the affdt. of Peter Wood on certain defts.(affdt. of Peter Wood is attached).	
5-75	Filed order--ORDERED that a summons and complaint in hthis action shall be served upon deft. Stanley Graze by personal service in the Bahamas at his residence address or elsewhere in the Bahamas bny Arthur Parris,the bailiff of thesupremem court or by any other of the official clerks of the Supreme Court in Nassau.Clerk,So ordered m/n	
25-74	Filed order--ORDERED that a summons and complaint in this action shall be served upon deft. Walter Blackman by personal service in the Bahamas at his residence address or eleswhure by the District Commissioner at Freeport,Grand Bahama, orwhomever he designateds. Clerk m/n	
25-74	Filed order--ORDERED that the receiver Arnold Burns is authorized and dire to cause deft. Vencap,Ltd. to pay to the firm of payey and Miller reasonable sums of money as incurred for disbursements,etc. as indicated.Stewart,J. m/n	
25-74	Filed stip. and order that deft. Richard Pistell is now represented by: Arthur Munisteri,521 5th Ave,NYC in place of Havens,Waldness,Stitt and Tighej ,So ordered,Stewart,J.	
25-74	Filed stip. and order that defts.Vencap,Ltd,Intervent Inc. and Intercapital NV are represented by: Paley and Miller of 275 Madison Ave,NYC.So ordered,Stewart,J.	
26-74	Filed copy of letter from the law firm of Anderson,Russell,Kill and Olick re: U.S. fundholders for IIT.	
6-74	Filed pltfs. supplemental order --ORDERED that defts. Pistell,Vencap, Intervent and Intercapital deliver to Arnold I. Burns,receiver a current statement of the assets of said defts. and the latest financial statements respecting said corporations,no later than Aug. 15,1974,etc. as indicated.So ordered,Stewart,J. m/n	
27-74	Filed stip. that copies of the following documents shall be transmitted to the USCA as part of the record onappeal: Transcript of proceedings of June 14,17,18,19,20,24, 1974 Filed on 7/22/74	

DATE	PROCEEDINGS	Date Order Judgment N
	Order of Judge Stewart modifying paragraph Filed on June 18, 1974	
.27-74	Filed stip. for designation of exhibits---pltfs. exhibits 1 through 35 A inclusive and defts. exhibits A through P are necessary for the determination of the appeal.	
,27-74	Filed notice that the second supplemental reconrd on appeal has been certified and transmitted to the USCA this date.	

CIVIL AC... 4 CIV. .
(Formerly D.C. Form No.45a Rev. .

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK 7A

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

CIVIL ACTION FILE NO. 74-2504

Plaintiffs,

v.

SUMMONS

VENCAP, LTD., INTERVENT, INC., INTER-CAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon Anderson Russell Kill & Olick, P.C.,

plaintiff's attorneys, whose address is 600 Fifth Avenue, New York, New York 10020

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Burghardt
Clerk of Court.

B. Harberson /s/
Deputy Clerk.

Date: June , 1974

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

8A

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD, INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

74 Civ. 2304 (CES)

COMPLAINT

PLAINTIFFS DEMAND A JURY TRIAL

The plaintiffs, IIT, an International Investment Trust (herein "IIT"), and Georges Baden, Jacques Delvaux and Ernest Lecuit as Liquidators for IIT (herein "Liquidators"), by their attorneys, Anderson Russell Kill & Olick, P.C., for their complaint respectfully allege upon information and belief:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is based on:

(a) §22(a) of the Securities Act of 1933, 15 U.S.C. §77v(a); Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa; §1337 of the Judicial Code, 28 U.S.C. §1337;

(b) diversity of citizenship with an amount in controversy exceeding the sum of $10,000.00, exclusive of interest and costs, under §1332 of the Judicial Code, 28 U.S.C. §1332;

(c) §1350 of the Judicial Code, 28 U.S.C. §1350;

(d) §302 of the New York Civil Practice Law and Rules; and

(e) the doctrines of ancillary and pendent jurisdiction.

9A

2. This action arises under §17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a); §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5 promulgated by the Securities and Exchange Commission thereunder, 17 C.F.R. 240.10b-5; §352-c of the General Business Law of the State of New York and under common law principles of fraud, misrepresentation, breach of fiduciary duty, corporate waste and conversion.

3. Many of the acts and transactions referred to in this complaint occurred in the Southern District of New York.

PARTIES

4. Plaintiff, IIT, is an International Investment Trust organized under the laws of the Grand Duchy of Luxembourg, with an office and place of business in Luxembourg. IIT has no office or place of business in the United States. IIT has shareholders who are citizens and residents of the United States.

5. Plaintiff, Liquidators, are citizens of Luxembourg and have been authorized by the District Court of Luxembourg to collect IIT's assets and prosecute IIT's claims. The Liquidators have no office or place of business in the United States.

6. Defendant, Vencap, Ltd. (herein "Vencap"), is a corporation organized and existing under the laws of the Commonwealth of the Bahamas. Vencap is owned and controlled by some or all of the defendants. Vencap has an office and place of business at 99 Park Avenue, New York, New York.

7. Defendant, Intervent, Inc. (herein "Intervent"), is a corporation organized and existing under the laws of Delaware. Intervent is the wholly-owned subsidiary of Vencap. Intervent is controlled by some or all of the defendants. Intervent has an office and place of business in Midland, Texas and at 99 Park Avenue, New York, New York.

8. Defendant, Intercapital, N.V. (herein "Intercapital"), is a corporation organized and existing under the laws of the Netherlands Antilles. Intercapital is owned and controlled by some or all of the defendants. Intercapital has an office and place of business in the Netherlands Antilles and at 99 Park Avenue, New York, New York.

9. Defendant, Richard C. Pistell (herein "Pistell"), is an individual and citizen of the United States. Pistell has an office and place of business at 99 Park Avenue, New York, New York. Pistell (a) claims to be the beneficial owner of 50% of the voting stock of Vencap and (b) claims to be the beneficial owner of 50% of the stock of Intercapital.

10. Defendant, Walter Blackman (herein "Blackman"), is an individual and citizen of the Commonwealth of the Bahamas. Blackman is (a) the record owner of 50% of the voting stock of Vencap and (b) the record owner of 50% of the stock of Intercapital.

11. Defendant, Robert L. Vesco (herein "Vesco"), is an individual and citizen of the United States. Vesco was a director of IOS, Ltd. (herein "IOS").

12. Defendant, Milton F. Meissner (herein "Meissner"), is an individual and citizen of the United States. Meissner was an officer, director or both, of IIT and President and a director of IIT Management Company (herein "IIT Management").

13. Defendant, Stanley Graze (herein "Graze"), is an

individual and citizen of the United States. Graze was consultant and portfolio manager for IIT. 11A

14. Defendant, Norman LeBlanc (herein "LeBlanc"), is an individual and citizen of Canada. LeBlanc was an officer, director or both, of IOS.

15. IOS is a corporation organized and existing under the laws of Canada.

16. Vesco, Meissner, LeBlanc and Graze, jointly and severally, controlled IOS, IIT Management and IIT. IOS controlled IIT and IIT Management. Pistell, Blackman, Vesco, Meissner, LeBlanc and Graze, jointly and severally, controlled Vencap, Intervent and Intercapital.

17. Charles E. Murphy, Jr. (herein "Murphy"), is an individual and citizen of the United States. Murphy is (a) a partner in the law firm of Havens, Wandless, Stitt & Tighe, (b) an officer of Vencap and (c) an attorney in fact for Pistell. Murphy has an office and place of business at 99 Park Avenue, New York, New York.

18. Defendant, David Taylor (herein "Taylor"), is an individual and citizen of the United States. Taylor is (a) a partner in the law firm of Havens, Wandless, Stitt & Tighe, (b) an officer of Vencap and (c) an attorney in fact for Pistell. Taylor has an office and place of business at 99 Park Avenue, New York, New York.

19. Defendant, Havens, Wandless, Stitt & Tighe (herein "Havens, Wandless"), is a partnership organized and existing under the laws of the State of New York. Havens, Wandless is engaged, among other things, in the practice of law, with an office and place of business at 99 Park Avenue, New York, New York. Each of the partners of Havens, Wandless is a citizen

20. Murphy, Taylor and other partners and employees of Havens, Wandless (a) acted as agent for Havens, Wandless within the scope of their authority and (b) acted on behalf of Havens, Wandless.

21. Havens, Wandless is attorney for Vencap, Intervent, Intercapital and Pistell and provides non-legal facilities and services for Vencap, Intervent, Intercapital and Pistell. Murphy, Taylor and Havens, Wandless assisted in the management of the assets of Vencap, Intervent and Intercapital.

22. Murphy and Taylor, acting as officers of Vencap, each signed corporate documents on behalf of Vencap.

23. Murphy and Taylor, acting as attorneys in fact for Pistell, each signed corporate documents of Vencap, Intervent and Intercapital on behalf of Pistell.

THE SCHEME

24. In or before May 1972, Pistell, Vesco, Meissner, Graze and LeBlanc, and others (herein collectively "conspirators") schemed and conspired to defraud, deceive and deprive IIT and its shareholders of substantial sums of money for the personal benefit and use of the conspirators (herein "scheme"). As part and in furtherance of the scheme, the conspirators agreed to and did, among other things:

(a) Sell all or most of IIT's readily marketable securities (herein "blue chip securities"), consisting primarily of publicly-held securities of United States corporations, which securities, prior to their sale, were in the custody of American National Bank and Trust in Morristown, New Jersey (herein "ANBT") as custodian for IIT;

(b) Cause some of the blue chip securities to be transferred to New York brokers for sale;

(c) Deposit in IIT's accounts at ANBT the cash received from the sales of the blue chip securities; 13A

(d) Cause the preparation of a three page memorandum purportedly for a $3,000,000 investment by IIT in Vencap;

(e) Remove $3,000,000 of the proceeds from the sale of the blue chip securities from ANBT where it was under the custody and control of IIT;

(f) Secrete the $3,000,000 outside the United States of America by making a sham purchase of worthless securities of Vencap;

(g) Use the $3,000,000 for the personal benefit of the defendants and others to the detriment of IIT and its shareholders.

25. Many of the acts done in furtherance of the scheme utilized the United States mails or other instrumentalities of interstate commerce.

26. Early in 1972, the conspirators implemented the scheme by causing IIT to sell the blue chip securities that were being held by ANBT. The value of these blue chip securities totalled more than $3,000,000. The blue chip securities were purportedly sold for the purpose of purchasing 30,000 shares of non-voting redeemable preference stock of Vencap and warrants for an additional 30,000 shares of non-voting redeemable preference stock (herein "non-voting Vencap securities").

27. In May or June, 1972, the conspirators organized Vencap, a shell corporation. Vencap's only significant asset is the cash transferred from IIT. Vencap had and presently has no

business.

28. Murphy, Taylor and Havens, Wandless, acting on behalf of Pistell, participated in the organization of Vencap.

29. Murphy, Taylor and Havens, Wandless, acting on behalf of Pistell, prepared many of the corporate documents utilized by Pistell, Blackman, Vencap, Intervent and Intercapital.

30. Meissner, purporting to act in his capacities as President and director of IIT Management, and Pistell purporting to act in his capacity as President of Vencap, entered into an agreement dated September 29, 1972 purportedly for the purposes of IIT investing $3,000,000 in Vencap in exchange for the non-voting Vencap securities. The September 29, 1972 agreement and IIT's purchase of the non-voting Vencap securities pursuant to the agreement were shams. The non-voting Vencap securities were and are worthless.

31. On or about October 6, 1972, the conspirators caused IIT to transfer the $3,000,000 of the proceeds from the sale of the blue chip securities from ANBT through various banking institutions so that it was eventually deposited outside the United States in Bahamas Commonwealth Bank in Nassau, Bahamas (herein "BCB"). The conspirators transferred the $3,000,000 to BCB in order to make the sham investment in Vencap.

32. On or about October 9, 1972, the conspirators caused IIT Management to instruct BCB to transfer the $3,000,000 to Vencap and the $3,000,000 was in fact transferred to Vencap.

33. The sham purchase by IIT of worthless non-voting Vencap securities for $3,000,000 was a device used by the conspirators to defraud IIT and its shareholders.

34. The defendants and others acting singly or in concert, intentionally, knowingly, willfully, recklessly and negligently made material misstatements of fact or omitted to

state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the sale of the blue chip securities and purchase of the non-voting Vencap securities.

35. The conspirators caused a three page memorandum to be prepared in order to make it appear that the $3,000,000 investment was bona fide and economically sound. The three page memorandum was prepared to provide a basis for IIT's transfer of the $3,000,000.

36. IIT relied upon the three page memorandum in transferring the $3,000,000 to Vencap or in the alternative the defendants are estopped from denying such reliance. The memorandum was fraudulent in purpose, intent and use.

37. The three page memorandum was prepared by Havens, Wandless in conjunction with the conspirators.

38. The three page memorandum was prepared purportedly for use "in connection with the private placement of securities"; which is a material misstatement of fact because the memorandum was not intended to be and was not used for such purpose, but rather to provide cover in furtherance of the scheme. The memorandum also contained the following material misstatements of fact, among others:

(a) "The primary purpose for organizing" Vencap "was to afford a vehicle for knowledgeable investors of a limited number to participate through 'preferential capital investment' in a sophisticated investment program with respect to growth opportunities throughout the world"; and Vencap's "purpose and philosophy are directed toward the sound investment of preferen-

tial capital utilizing management's contacts and experience in growth opportunities which are designed to reflect both short and long term returns on investment";

(b) Vencap's management "offers a broad international and financial experience in venture capital programs"; Vencap offers "solid management experience and background. . . at this early stage of its development"; and Pistell is an "internationally known Investor, Financial Consultant and Manager whose broad experience includes airline financing";

(c) Vencap "proposes to offer on a very limited basis an aggregate initially of $3,000,000 in preferred shares". . . "to a select group of sophisticated investors" who recognize that "risk deserves a high return";

(d) Vencap "is currently negotiating for the acquisition of an equity and debt position in a leading Caribbean air carrier with routes into Miami and other ports in Florida"; which (i) "is on the verge of introducing jet service to certain of its domestic and foreign routes"; and (ii) "even in the absence of jet service with which it must compete with such international carriers as Pan Am and Eastern". . . "has earned in excess of $350,000 in the past six months commencing March of 1972";

(e) Vencap "is contemplating an investment consisting of debt and equity of up to $1,500,000 which it believes" (i) "will significantly contribute to the strengthening of operations and earnings of the

and substantial return on" Vencap's "investment", and (iii) "is just one of several outstanding prospects which" Vencap is contemplating that "will enable" Vencap "to establish a broad investment base designed to offer. . . short and long term returns which will inure primarily to the benefit of the preferential capital investors" in Vencap. 17A

39. The three page memorandum failed to disclose the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:

(a) Pistell was in severe financial trouble and owed the United States government more than $500,000 in back taxes and that the United States government had imposed a lien on Pistell's property;

(b) A substantial portion of the money purportedly invested by IIT in Vencap, would, within a short time after the investment was made, be used to secure a $590,000 loan by Intercapital to Pistell personally, for the personal benefit of Pistell, to pay taxes owed to the United States government;

(c) Vencap would be used to defraud the United States government by using it as an artifice to hide the assets of Pistell to enable him to evade the tax liens;

(d) Vencap assets would be used to pay personal expenses of Pistell;

(e) The air carrier discussed in the three page memorandum was not a leading Caribbean air carrier;

(f) Vencap would not invest $1,500,000 in debt and equity in a leading Caribbean air carrier;

(g) Vencap would fail to segregate and safeguard the funds from the proceeds from the sale of the non-voting Vencap securities so that they would be used for the specific purposes stated in the three page memorandum which were to invest in "growth opportunities" and in equity and debt in a leading Caribbean air carrier;

(h) Vencap would invest approximately $600,000 in Out Islands Airways which is not a leading Caribbean air carrier;

(i) Substantially all the cash transferred to Vencap by IIT would be turned over to companies in which Pistell had a substantial personal interest;

(j) The Board of Directors of Vencap on August 29, 1972 authorized Vencap to purchase all the issued shares of International Reinsurance Company, Ltd. for approximately $1,750,000.

(k) Vencap and Pistell would enter into a sham employment agreement pursuant to which large sums of cash would be turned over to Pistell in the guise of salary and expenses;

(l) Vencap would purportedly hire Blackman pursuant to a sham arrangement whereby large sums of cash would be turned over to Blackman;

(m) Pistell and Blackman would organize a Netherlands Antilles corporation called Intercapital through whom Vencap would make loans and investments;

(n) Pistell would cause Vencap to organize a Delaware corporation called Intervent through which it would purchase oil and gas leases;

(o) Pistell would cause Vencap to invest in a company called Sangin that would purchase a concession from the Turkish wine monopoly;

(p) Pistell would cause Vencap, Intervent and Intercapital to make unsecured personal loans to various individuals;

(q) Vencap was a sham, device, fraud and artifice to obtain money from IIT for the personal benefit of the conspirators to the detriment of IIT and its shareholders.

40. All of the $3,000,000 remains out of the custody and control of IIT.

41. The conspirators have wrongfully taken $3,000,000 and converted it to their own use.

42. The $3,000,000 is presently in the custody, control or both, of Vencap, Intercapital, Intervent, Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor and Havens, Wandless.

FIRST CAUSE OF ACTION

43. In connection with the sale of the blue chip securities and the purchase of the non-voting Vencap securities, the defendants acting singly and in concert, violated §17(a) of the Securities Act of 1933, in that defendants and others,

directly and indirectly, to the detriment of IIT and its shareholders:

(a) employed devices, schemes and artifices to defraud;

(b) obtained money or property of IIT by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in transactions, practices and courses of business which operated as a fraud and deceit upon IIT.

SECOND CAUSE OF ACTION

44. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

45. In connection with the sale of the blue chip securities and the purchase of the non-voting Vencap securities, the defendants, acting singly and in concert, violated §10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder in that the defendants and others directly and indirectly, to the detriment of IIT and its shareholders:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices and courses

of business which operated as a fraud and deceit upon IIT.

THIRD CAUSE OF ACTION

46. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

47. In connection with the sale of the blue chip securities and the purchase of the non-voting Vencap securities, the defendants except Murphy, Taylor and Havens, Wandless, acting singly and in concert, violated §352-c of the General Business Law of the State of New York, in that the defendants and others, directly and indirectly induced IIT to the detriment of IIT and its shareholders, to transfer the $3,000,000 to Vencap in reliance upon false and misleading statements and representations and omission of material facts which the defendants:

(a) knew or should have known were false and fraudulent when made; or

(b) made no reasonable effort to ascertain the truth of the statements.

FOURTH CAUSE OF ACTION

48. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

49. The defendants except Murphy, Taylor and Havens, Wandless have defrauded IIT and its shareholders by transferring the $3,000,000 to Vencap.

50. The defendants except Murphy, Taylor and Havens, Wandless have converted the $3,000,000 for their personal benefit.

51. The defendants except Murphy, Taylor and Havens, Wandless are continuing to defraud IIT and its share-

result, IIT and its shareholders are being severely and irreparably damaged.

FIFTH CAUSE OF ACTION

52. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

53. On or about March 29, 1973, an agreement was signed by Blackman purportedly on behalf of Vencap for the employment of Pistell.

54. This agreement was a device to siphon money belonging to IIT for the personal benefit of some or all of the defendants and was excessive, grossly unfair, a sham, waste and a fraud on IIT and its shareholders.

55. On or about May 22, 1973, an agreement was signed by Pistell purportedly on behalf of Vencap for the employment of Blackman.

56. This agreement was a device to siphon money belonging to IIT for the personal benefit of some or all of the defendants and was excessive, grossly unfair, a sham, waste and a fraud on IIT and its shareholders.

57. Pistell and Blackman have utilized the cash transferred from IIT to Vencap for their personal benefit, such as payment of Pistell's taxes, living expenses and other personal expenses, thereby defrauding IIT and its shareholders.

58. Pistell and Blackman are continuing to utilize the assets of IIT transferred to Vencap for their personal benefit, and as a result, IIT and its shareholders are being severely and irreparably damaged.

59. The defendants except Murphy, Taylor and Havens, Wandless have committed fraud and converted the $3,000,000 for their personal benefit.

60. The allegations contained in paragraphs 1 through 42 and 53 through 58 are repeated and realleged.

61. The defendants have wasted the corporate assets of Vencap to the detriment of IIT and its shareholders.

SEVENTH CAUSE OF ACTION

62. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

63. Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy and Taylor had a fiduciary obligation to IIT and its shareholders which included the obligation to promote, protect and defend the interests and property of IIT transferred to Vencap.

64. Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy and Taylor have, jointly and severally, breached their fiduciary obligations to IIT and its shareholders.

EIGHTH CAUSE OF ACTION

65. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

66. Murphy, Taylor and Havens, Wandless had a fiduciary obligation to IIT and its shareholders which included their obligation to promote, protect and defend the interests and property of IIT transferred to Vencap.

67. Murphy, Taylor and Havens, Wandless have breached their fiduciary obligation to IIT and its shareholders.

NINTH CAUSE OF ACTION

68. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

69. Murphy, Taylor and Havens, Wandless performed non-legal services, acted as corporate officers and assisted in the management of Vencap, Intervent and Intercapital and as such, aided and abetted Pistell, Blackman and others in committing securities law violations, fraud, breach of fiduciary obligations, conversion and wasting corporate assets to the detriment of IIT and its shareholders. 24A

70. Murphy, Taylor and Havens, Wandless are continuing to assist, aid and abet the defendants to commit securities law violations, fraud, breach of fiduciary obligations and wasting corporate assets, and as a result, IIT and its shareholders are being severely and irreparably damaged.

TENTH CAUSE OF ACTION

71. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

72. The defendants had a duty to see that the funds transferred by IIT to Vencap would be segregated and utilized solely for the purposes stated in the three page memorandum.

73. The defendants failed to see that the funds were so segregated and used, to the detriment of IIT and its shareholders.

ELEVENTH CAUSE OF ACTION

74. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

75. Murphy, Taylor and Havens, Wandless had a duty as attorneys for Vencap, Intervent, Intercapital and Pistell to see that the funds transferred by IIT to Vencap would be segregated and utilized solely for the purposes stated in the three page memorandum.

76. Murphy, Taylor and Havens, Wandless failed to see that the funds were so segregated and used, to the detriment of IIT and its shareholders.

TWELFTH CAUSE OF ACTION

77. The allegations contained in paragraphs 1 through 42 are repeated and realleged.

78. Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor and Havens, Wandless each knew, or reasonably should have known, of both the scheme and the intention of the conspirators.

79. Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor and Havens, Wandless each knew or reasonably should have known that any directions or authorization in furtherance of the scheme were invalid.

80. Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor and Havens, Wandless negligently, recklessly, willfully, knowingly and/or intentionally breached their respective duties and fiduciary obligations to IIT and its shareholders by, among other things:

(a) Failing to advise and inform IIT and its shareholders that the conspirators were participating in a scheme to defraud, deceive and deprive IIT of the $3,000,000;

(b) Failing to advise and inform IIT and its shareholders that Vencap was organized for the purpose of defrauding IIT of the $3,000,000;

(c) Failing to advise and inform IIT and its shareholders that the memorandum relied upon by IIT to make its investment was false, fraudulent and illegal;

(d) Assisting, aiding and/or abetting the scheme by allowing and assisting Pistell and Blackman in utilizing Vencap for their personal benefit; 26A

(e) Failing to object to, advise and inform IIT and its shareholders that Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Vencap, Intervent and Intercapital were violating the securities laws of the United States;

(f) Failing to advise and inform IIT, its shareholders, the Securities and Exchange Commission, and the United States Department of Justice of the scheme and the facts relating to the scheme and the intention of the conspirators;

(g) Failing to take all necessary steps to perform their fiduciary obligations and duties in good faith and to promote, protect and defend the interest and property of IIT invested in Vencap by preventing the continued conversion of corporate assets by Pistell and Blackman and the continued utilization of the corporate entities for the sole benefit and enjoyment of Pistell and Blackman;

(h) Participating in the scheme.

WHEREFORE, the plaintiffs IIT and the Liquidators demand judgment against defendants, jointly and severally, as follows:

1. With respect to the THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH, and TWELFTH CAUSES OF ACTION, appointing a temporary receiver to take all necessary steps to preserve the assets of Vencap, Intervent and Inter-

enjoining and restraining the defendants, Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor, Havens, Wandless, Vencap, Intercapital and Intervent, their officers, directors, agents, servants, employees, attorneys, affiliates and persons acting for or in concert or in active participation with them or having notice of this injunction from selling, transferring, encumbering or otherwise disposing of any assets of Vencap, Intercapital or Intervent.

2. With respect to the FIRST CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

3. With respect to the SECOND CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

4. With respect to the THIRD CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants except Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

5. With respect to the FOURTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants except Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

6. With respect to the FIFTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants except Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

7. With respect to the SIXTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants in the sum of $3,000,000, together with interest from the date of the

transfer of the cash.

8. With respect to the SEVENTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy and Taylor in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

9. With respect to the EIGHTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants, Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

10. With respect to the NINTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

11. With respect to the TENTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

12. With respect to the ELEVENTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

13. With respect to the TWELFTH CAUSE OF ACTION, that the plaintiffs be awarded damages against the defendants Pistell, Blackman, Vesco, Meissner, LeBlanc, Graze, Murphy, Taylor and Havens, Wandless in the sum of $3,000,000, together with interest from the date of the transfer of the cash.

14. With respect to each of the defendants that plaintiffs be awarded punitive damages in the sum of $10,000,000.

15. With respect to each cause of action, that plaintiffs have such other and further relief as the Court may deem

just and proper, including but not limited to costs and disbursements in this action and reasonable attorneys' fees.

ANDERSON RUSSELL KILL & OLICK, P.C.

By _____

A Member of the Firm
Attorneys for Plaintiffs
600 Fifth Avenue
New York, New York 10020
(212) 541-8100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

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30A

74 Civ. 2304 (CES)

ORDER TO SHOW CAUSE WITH A TEMPORARY RESTRAINING ORDER

Upon the annexed affidavit of Eugene R. Anderson, Esq., sworn to on June 7, 1974, the annexed copy of the summons and complaint herein and upon all prior papers and proceedings heretofore had herein, and sufficient cause appearing therefor, it is

ORDERED, that the defendants Vencap, Ltd., Intervent, Inc., Intercaptial, N.V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe (herein "Pistell Group") individually and collectively show cause before this Court at Room , United States Court House, Foley Square, New York, New York, on the day of , 1974 at o'clock or as soon thereafter as counsel can be heard why:

1. A preliminary injunction should not be issued pursuant to F.R.C.P. 65 enjoining and restraining the Pistell Group, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them

and those having notice of such injunction from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc., and Intercapital, N.V.

31A

2. The Pistell Group, their agents and employees, should not be ordered to turn over to a receiver appointed by this Court all present and future assets of IIT, Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. including those presently in their possession and control and those that subsequently may come into their possession and control until a final determination has been rendered in this matter; and it is further

ORDERED, that pending the hearing of this motion Vencap, Ltd., Intervent, Inc., Intercapital, N.V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this temporary restraining order are hereby enjoined and restrained from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap. Ltd., Intervent, Inc., and Intercapital, N.V. and it is further

ORDERED, that plaintiffs shall file an undertaking in the amount of $ in the form required by the Rules of this Court by June , 1974 at o'clock for the payment of such costs and damages as may be incurred or suffered by the Pistell Group if it is found that they were wrongfully enjoined or restrained; and it is further

ORDERED, that service of duly conformed copies of this Order to Show Cause with temporary restraining order and the papers upon which it is based be made in the following manner:

1. Upon Vencap, Ltd. by leaving a copy at its office at 99 Park Avenue, New York, New York and also by airmail (such service to be complete upon mailing) at its offices at P.O. Box N-7776, Nassau, Bahamas.

2. Upon Intervent, Inc. by leaving a copy at its office at 99 Park Avenue, New York, New York and also by airmail (such service to be complete upon mailing) at its office at 303 Wall Towers West, Midland, Texas.

3. Upon Intercapital, N.V. by leaving a copy at its office at 99 Park Avenue, New York, New York and also by airmail (such service to be complete upon mailing) at its office at Kerkstaat 8-B, Curacao, Netherlands Antilles (Attention: Dr. Jacob A. Schiltkamp).

4. Upon Richard C. Pistell personally or by leaving a copy at his office at 99 Park Avenue, New York, New York, or by leaving a copy with either of his attorneys-in-fact, David Taylor and Charles E. Murphy, Jr. or by leaving a copy with attorneys-at-law, Havens, Wandless, Stitt & Tighe, and also by airmail (such service to be complete upon mailing) at his residence at Lyford Cay, Nassau, Bahamas.

5. Upon Walter Blackman, via airmail (such service to be complete upon mailing) at his office at P.O. Box N-7776, Nassau, Bahamas.

6. Upon Robert L. Vesco by certified mail return receipt requested, via airmail (such service to be complete upon mailing) at his office located at Charlotte House, Nassau, New Providence Island, Bahamas and, personally upon his attorneys,

Paul, Weiss, Rifkin, Wharton & Garrison, at their offices at 345 Park Avenue, New York, New York.

7. Upon Milton F. Meissner by certified mail return receipt requested, via airmail (such service to be complete upon mailing) at his office located at Hotel Balmoral, Nassau, Bahamas and personally, upon his attorneys, Palmer and Searles, 120 Broadway, New York, New York.

8. Upon Norman LeBlanc by certified mail return receipt requested, via airmail (such service to be complete upon mailing) at his office located at La Guardia Moravia, San Jose, Costa Rica.

9. Upon Stanley Graze by certified mail return receipt requested, via airmail (such service to be complete upon mailing) at his office located at 5 Grafton Street, London, England, W.1 and personally, upon his attorneys, Squadron, Gartenberg, Ellenoff & Pleasant, 551 Fifth Avenue, New York, New York.

10. Upon Charles E. Murphy, Jr. personally or by leaving a copy at his law office located at 99 Park Avenue, New York, New York.

11. Upon David Taylor, personally or by leaving a copy at his law office located at 99 Park Avenue, New York, New York.

12. Upon Havens, Wandless, Stitt & Tighe by leaving a copy at their office located at 99 Park Avenue, New York, New York, and sufficient cause appearing, it is

ORDERED that service of the Order to Show Cause and the papers upon which it is granted by the attorneys for the plaintiffs, Anderson Russell Kill & Olick, P.C. or their employees or representatives in the aforementioned manner on or before June , 1974 at o'clock shall be deemed good and sufficient service thereof.

Dated: New York, New York
June , 1974

U.S.D.J.

SOUTHERN DISTRICT OF NEW YORK

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IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

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34A

74 Civ. 1104 (CES)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER BROUGHT ON BY ORDER TO SHOW CAUSE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EUGENE R. ANDERSON, being duly sworn, deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., a professional corporation, attorneys for the plaintiffs herein. I submit this affidavit in support of plaintiffs' motion pursuant to Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order enjoining and restraining the defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe (herein individually and collectively "Pistell Group"), and those acting in concert with them from dissipating, transferring, spending, investing or otherwise exercising any control whatsoever over assets of Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. or any assets heretofore or hereafter transferred to Pistell from Vencap until this

Court holds a hearing on plaintiffs' application for a preliminary injunction.

2. The facts stated in this affidavit are stated upon information and belief. The sources of the information and the basis for the belief are the transcripts of Pistell's testimony in SEC v. Vesco, et al., 72 Civ. 5001, at the Hearing on Preliminary Injunction, the transcripts of his testimony on deposition in that case, exhibits introduced or referred to during Mr. Pistell's testimony during the hearing and exhibits furnished by Mr. Pistell or his counsel during the course of or following the deposition. The source of other facts appear at the place that the facts appear in the affidavit.

3. Plaintiff, IIT, an International Investment Trust (herein "IIT"), is organized and existing under the laws of the Grand Duchy of Luxembourg. The District Court of Luxembourg, first section, has appointed Georges Baden, Jacques Delvaux and Ernest Lecuit as Liquidators for IIT (herein "Liquidators"). Anderson Russell Kill & Olick, P.C. has been retained as United States counsel for the Liquidators. IIT is a mutual fund and has shareholders who are citizens of the United States. In essence, the funds invested in Vencap, Ltd. were public monies from citizens of the United States as well as foreign nationals.

4. The Pistell Group consists of certain of the named defendants in the complaint herein, namely:

(a) Vencap, Ltd. (herein "Vencap") is a Bahamian corporation;

(b) Intercapital, Inc. (herein "Intercapital") is a Netherland Antilles corporation;

(c) Intervent, Inc. (herein "Intervent") is a Delaware corporation and a wholly-owned subsidiary of Vencap;

(d) Richard C. Pistell (herein "Pistell") (i) claims

to be the beneficial owner of 50% of the voting stock of Vencap and is director, president and treasurer of Vencap (Exhibit A)*; (ii) claims to be the beneficial owner of 50% of the stock of Intercapital and is director, president and treasurer of Intercapital (pp. 57-58 of Deposition); (iii) is the president and treasurer of Intervent (Exhibit B and Exhibit C) and (iv) as shown later in this affidavit, Pistell has used more than $1 million of the funds received from IIT and hence its shareholders for his own use and benefit;

(e) Charles E. Murphy, Jr. (herein "Murphy")(i) is a member of the Bar of the State of New York; (ii) is a partner in the law firm of Havens, Wandless, Stitt & Tighe; (iii) is attorney-in-fact for Pistell (Exhibit D); and (iv) was a director and secretary of Vencap (Exhibit A);

(f) David Taylor (herein "Taylor")(i) is a member of the Bar of the State of New York; (ii) is a partner in the law firm of Havens, Wandless, Stitt & Tighe; (iii) was assistant secretary of Vencap (p. 44 of Deposition); (iv) was the sole incorporator and is the secretary of Intervent (Exhibit C); (v) is secretary of Intercapital, N.V.; and (vi) is attorney-in-fact for Richard C. Pistell (Exhibit D);

(g) Havens, Wandless, Stitt & Tighe (herein "Havens, Wandless") is a partnership engaged, among other things, (i) in the practice of law; (ii) acting as depository for certain assets of Vencap (p. 235 of Deposition); (iii) renting office space to

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*All exhibits to this affidavit are in a separate binder and were provided by Pistell in the case of SEC v. Vesco, et al., 72 Civ. 5001, either (1) at the Hearing on Preliminary Injunction, (2) at the Deposition of Pistell on May 6, 7, 1974 or (3) thereafter pursuant to requests made at that deposition. All testimony quoted in this affidavit from the trial testimony of Pistell at the Hearing on Preliminary Injunction is denominated "Transcript". Pistell's testimony at the Deposition is denominated "Deposition."

Pistell, Vencap, Intervent and Intercapital (p. 6 of Deposition); and (iv) providing aid in the management of Vencap, Intervent and Intercapital. Havens, Wandless represented Pistell at the Hearing on Preliminary Injunction and during the Deposition.

5. A temporary restraining order and a preliminary injunction are necessary to prevent the continued dissipation of the assets of Vencap. Vencap's assets consist solely of the remains of $3,000,000 which was transferred from IIT to Vencap. These assets have been and are continuing to be dissipated by defendant Pistell and others with the aid and assistance of Murphy, Taylor and Havens, Wandless. As more fully detailed below, Pistell is using IIT's funds to pay himself an exorbitant "salary" and to pay his living and other expenses. The result of Pistell's action has been the continued dissipation of these assets of Vencap. A subsidiary reason for preventing Pistell from wholly draining Vencap of all of its assets is to stop him from making it judgment-proof to the detriment of plaintiffs and the shareholders of IIT. The assets of IIT transferred to Vencap are probably the only source of funds reasonably available to satisfy a judgment rendered herein. From the fact that Pistell cannot pay his taxes (infra, ¶20) it is reasonable to conclude that he will not be able to pay any judgment. In addition, there is imminent danger that Pistell and others will continue to utilize for their personal benefit IIT's assets which were transferred to Vencap.

The Scheme

6. The scheme of the defendants to defraud IIT and its shareholders of $3,000,000 is described in detail in the complaint and will be annotated herein with the testimony of Pistell and exhibits.

7. In essence, the defendants Pistell, Vesco, Meissner,

LeBlanc and Graze, are charged with devising a scheme in 1972 for the purpose of wrongfully appropriating $3,000,000 belonging to IIT for the personal benefit of Pistell and others. Specifically, the complaint alleges that Pistell, with the aid and assistance of Havens, Wandless organized a shell corporation, Vencap, as a Bahamian corporation, and then pursuant to a "sham" transaction engineered by defendants, $3,000,000 was transferred from IIT to Vencap.

8. Pistell was associated with the defendant Robert L. Vesco in early 1972 (p. 2195 of Transcript) and participated in a number of deals with Vesco (pp. 2196, 2220-2236 of Transcript).

9. During the period of June, July and August of 1972, Pistell reached an agreement with Stanley Graze, a defendant herein and an associate of Vesco, that IIT or one of the other Vesco funds would invest $3,000,000 in Vencap (pp. 2257-2258 of Transcript).

10. In May or June 1972, Pistell organized Vencap (p. 41 of Deposition) and held it out as an investment company for a "select group of sophisticated investors". Pistell and Vencap published a three-page memorandum indicating the investment policy Vencap would follow and specifically described the first major investment it would make in the amount of $1,500,000 (Exhibit E). This memorandum held out Vencap as an investment company - "The Company's purpose and philosophy are directed toward the sound investment of preferential capital utilizing management's contacts and experience in growth opportunities which are designed to reflect both short and long term returns on investment" (p. 2 of Exhibit E).

11. On or about September 29, 1972, Milton Meissner, one of the defendants herein, acting on behalf of IIT, entered

into an agreement with Pistell who was purporting to act on behalf of Vencap whereby IIT would purchase 30,000 shares of Redeemable Preference Stock in Vencap together with warrants to purchase an additional 30,000 shares of Redeemable Preference Stock (herein collectively "Vencap non-voting securities") (Exhibit F).

12. As Pistell states in his testimony, this agreement and the subsequent transfer of the $3,000,000 was based upon the three-page memorandum prepared by Murphy or Taylor, partners in Havens, Wandless:

By Mr. Kushner*:

"Q. Did you present him [Graze] with any written proposal?

A. No. I think -- yes, we formed a company, and I did send Mr. Graze a proposal or the outline of the company, my attorneys did.

Q. Pardon me?

A. My attorneys sent him an outline of the proposal (p. 2259 of Transcript).

* * *

Q. Did you write this document, Exhibit 278 [Exhibit E]?

A. No, I didn't write it. Probably Charlie Murphy or Mr. Taylor wrote it.

MR. LIMAN: Can we have an identification as to who Charlie Murphy and Mr. Taylor are?

THE WITNESS: They are attorneys with the firm of Havens, Wandless, Stitt & Tiegh [sic], attorneys on my behalf.

Q. Did you provide any of the substance that went into the memorandum?

A. Yes, I did (pp. 2259-2260 of Transcript).

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*All questioning of Pistell at the Hearing on Preliminary Injunction and at the Deposition was done by Robert Kushner, Esq., Assistant General Counsel of the SEC.

as there anything else in writing you
ubmitted to Mr. Graze prior to the
ctual agreements?

think -- I can't recall specifically,
o" (p. 2263 of Transcript).

ter the September 29, 1972 agreement was signed,
transferred to Vencap began its circuitous route
ository in Vencap. On October 6, 1972, American
d Trust of Morristown, New Jersey (herein "ANBT"),
securities owned by IIT, was directed to transfer
esignated for Vencap from an account at ANBT in
Luxembourg for the account of IIT to Bahamas
k (Exhibit G)(herein "BCB") and on October 9,
000 was transferred from the ODB Luxembourg
o the Vencap account at the same bank (Exhibit H).
ile IIT transferred $3,000,000 to Vencap, Pis-
t in Vencap was minimal.

first, Pistell stated that he invested $20-
Vencap voting stock:

o you recall how much money you. . .
aid for these shares?

ell No. 1 on the start up of the
orporation I put, in the original
ccount, I believe $100,000, which a
ertain amount, I believe, 20 to 25,000
as left in against the subscription
rice of the Company for start up costs
. . (p. 2327 of Transcript).

* * *

ow much of that was for the purchase of
our stock in Vencap and how much was for,
or example, a loan from you to Vencap?

xcuse me?

as all this treated as share capital?

ell as a contribution, you know, as far
s that's concerned, yes.

he amount you say is 20 to $25,000?

yes. I
dollar a
that's j
of share
up there
know.

Q. Aside fr
of $20 t
any othe

A. Did I pe

Q. Yes, sir

A. Well, I
for thin
company
share pu
it was h

Q. Would th
the comp

A. No. Jus
2329 of

16. After the

the Hearing on Prelimin

recast. Pistell had Ve

the entire $100,000 fro

Pistell to Vencap (Exhi

later, at his depositio

was, in fact, his money

"A. We have
hundred
Vencap w
funds ou
checking
States b
against
Vencap a
to the p
which th
296-297

17. The end r

sheet (Exhibit J) prepa

common stock equity is

to Pistell.

The First General Meetin

of the above-named Company wa

mean whether it says we paid a
share here, whatever it is,
ust the amount of the payment —
s because it starts a corporation
are quite a few costs, as you

om this amount you have mentioned
o $25,000, did you ever invest
r moneys in Vencap?

rsonally?

imagine I put a lot of money out
gs at times, yes, to start the
up. But as far as the actual
rchase, it's exactly as it said
ere. . .

e balance be a loan from you to
any?

t start up, you know" (pp. 2328-
Transcript).

statements made on April 13, 1973 at

ary Injunction, Pistell had the transaction

ncap enter into an agreement changing

m a capital contribution to a loan from

bit I). Moreover, approximately a year

n, Pistell stated that the entire amount

:

a list, Bob, of approximately a
thousand dollars that I put in
hen it started where I took those
t of Vencap I had no personal
account at that time in the United
ecause I had a tax lient [sic]
me on everything, and I used the
ccount for my personal checkbook up
oint of a hundred thousand dollars
e accountant had broken down" (pp.
of Deposition).

esult, reflected on the Vencap balance

red by its accountant, is that the <u>total</u>

$4,000, $2,000 of which is attributable

g of the members, as Incorporators,

s held by order of the Directors of

18. From the first organization of Vencap, Pistell and Walter Blackman, the record owner of 50% of the voting stock of Vencap, with the aid of Havens, Wandless, have embarked on a concerted course of conduct to milk the assets of IIT for the personal benefit of Pistell and others that bears no relationship to the purposes outlined in the three-page memorandum. It is obvious that the funds were not segregated by the Pistell Group so that they were used solely for the purposes set for them in the three-page memorandum.

19. As Pistell has testified (¶16, supra), he has utilized Vencap as his "personal checkbook" to avoid a United States tax lien.

20. Pistell has utilized Vencap, Intervent and Intercapital to make personal loans of the IIT shareholder's funds to himself:

(a) In February 1973 Vencap arranged a loan by Handelskredit-Bank A.G., Zurich, Switzerland to Intercapital. In turn, Intercapital loaned Pistell $590,000 to pay certain United States taxes owed by Pistell personally:

"Q. Let me turn to the 590,000 dollar loan which Intercapital received from Handelskredit Bank; is that true?

A. That is correct.

Q. And that loan is at the risk of Vencap?

A. That is correct, but it is collateralized by my stock in Flag-Redfern.

* * *

Q. Now, what did Intercapital do with the 590,000 dollars, is it correct that you received it?

A. I received it on a loan, Bob.*

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*"Bob" is Robert Kushner, Esq.

A. I paid most of it to the -- I paid U.S. Tax Department and a few other people" (pp. 222-224 of Deposition). 43A

(b) In December, 1973, Pistell instructed Blackman to act on behalf of Vencap to consent to Intervent loaning Pistell an additional $55,000 (Exhibit K);

(c) In addition to the loans described above, Vencap's accountants have provided a detailed analysis of the money given to Pistell (Exhibit L). Vencap has given Pistell, directly in cash, at least $356,460.62;

(d) Beside the direct payment to Pistell, Pistell has utilized IIT's assets to pay his personal expenses, a few of which are detailed below:

(i)	Airplane Travel	$16,558.01
(ii)	American Express	15,420.65
(iii)	Limousine Service in New York	12,309.50
(iv)	Metropolitan Club	2,398.73
(v)	Sleepy Hollow Country Club	2,170.34
(vi)	New York Telephone Company	2,149.92
	Total	$51,007.15

21. In summary, the approximate amount of IIT's assets paid to Pistell personally or utilized to pay his expenses is $1,052,467. Pistell is spending money rightfully belonging to IIT's shareholders -- and spending it as if the money were his to do with as he wishes.

22. Pistell, on May 21, 1973, more than seven months after Vencap received IIT's $3,000,000, had Vencap enter into

a seven-year employment agreement with himself that provided for a $60,000 salary plus expenses and a $150,000 house (Exhibit M). Putting aside the grossly excessive advances previously paid to or for Pistell, this agreement on its face is grossly excessive. By comparison, a major New York City bank that acts as an advisor and manager of large sums of money has the following annual fee schedule:

3/4 of 1% on first $500,000;
3/8 of 1% on next $500,000;
1/4 of 1% on everything else.

Similarly, a major brokerage firm that has an investment advisory and management subsidiary has the following annual fee schedule:

3/4 of 1% on first $500,000;
1/2 of 1% on next $1,000,000;
3/10 of 1% on next $1,500,000.

Finally, another subsidiary of a major brokerage firm has a flat annual fee of 1/2 of 1% on accounts over $200,000.

23. Nor has Pistell been less generous with his associates. The largess flowing from the coffers of Vencap has been truly remarkable.

24. For their role in this affair, Pistell has paid his lawyers, the law firm of Havens, Wandless, approximately $250,000 for services rendered to Vencap. The amount seems somewhat large considering the fact that (1) Vencap is supposed to be an investment company and (2) Vencap's total assets are only $3,000,000.

25. Walter Blackman, Pistell's "partner" in these transactions, was given an employment contract with Vencap on May 22, 1973 providing for a salary of $20,000 per annum as of March 17, 1973 (Exhibit N). Payment was to be made in equal monthly installments. Yet, contrary to the agreement, Blackman was given $20,000 on the day the agreement was entered into (Exhibit O). Moreover, Blackman had received from Vencap an

additional $5,000 in April, 1973 (p. 4 of Exhibit P). In summary, in the first year, running from March 17, 1973 through March 17, 1974, Blackman received more than one year's salary by May 22, 1973.

26. Pistell has also been generous to friends and acquaintances:

"Q. Also for April 1973 there are disbursements for 2300 to Frank Lichtenburg, 5,000 to Tony Hill?

A. Right.

Q. And $10,000 to S.E. Malouf?

A. Right.

Q. What were those for?

A. The first $2300, Bob, was a boat chartered to go down and look at various sites that we were going to set up with a Hertz-U-Drive-It System with boats in construction [sic] with Outer Island Airline which Vencap would have owned entirely where you would have flown in, we were going to buy or lease a group of boats and then bring them back for a week or a weekend, stopping at various spots after we sold the airline we decided not to go in the business.

Q. Who is Mr. Lichtenburg?

A. He is a boat captain that I have known for many years and--he is a boat charter capyain [sic].

Q. You will note there is an entry consulting fee next to the amount paid him?

A. Yes, he knows the island as well as anyone else and was getting to help manage a very large boatel-hotel arrangement on one of the islands down there, Acquaville or whatever they call it.

Q. How about the item to Mr. Hill?

A. Tony Hill paid us--we made a short-term loan to Tony Hill and he paid us back with ten percent interest so we should have a re-entry against that somewhere" (pp. 313-314 of Deposition).

* * *

Q. J. Allen, who is that?

A. J. Allen was a promoter that we had met that was working on some financing for a company called Crystal Oil and Gas down in Texas. And we haven't seen him since. Basically -- I don't know where he is.

Q. What's his first name?

46A

A. I believe it's Jerrold.

Q. Are you positive that it's not John?

MR. LANZOTTI: Jerome.

A. I haven't the slightest idea.

Q. Did he engage in any transactions with Vencap?

A. No.

He did introduce us to some people, and he did introduce us to the people with Crystal Oil Corporation.

Q. And did he get paid for those services?

A. He did try and -- he did introduce me to some people in London.

Q. Did he get paid for those services?

A. He got a retainer, which we have a note that he owes us the money.

Q. He got a retainer from whom?

A. He got a retainer from -- Was it -- Who did he get the retainer from?

MR. TAYLOR: I think it was from Vencap.

A. Right, Vencap.

Q. What amount?

A. I think it's $10,000, of which we hold his personal note.

Q. It wasn't a retainer; or was it a retainer?

A. It was a loan, basically. We have his signed note for that loan." (pp. 94-96 of Deposition)

We have been advised by the United States Attorney's office that Jerome Allen is a convicted felon awaiting sentencing.

27. Pistell's philanthropy has not been limited to

himself and his friends but also to companies that he or one of the defendants has or had an interest in:

47A

(a) In October-November, 1972, Pistell had Vencap purchase approximately 158,100 shares of Lincoln AmericanCorporation at a cost of $650,878.44 and, a year later, purchased another 7,500 shares at a cost of $21,139.36. Vencap has invested a total of $672,017.80 in Lincoln American (Exhibit Q). Pistell had been a director and Chairman of the Executive Committee of Lincoln American Corporation;

(b) In December 1972 Pistell loaned Out Island Airways approximately $600,000. It is believed that Charles E. Murphy, Jr., the first Secretary of Vencap, was a part owner of Out Island Airways and Havens, Wandless was counsel to the company from at least 1971;

(c) In or about August 1973, Pistell had Vencap lend Intercapital $75,000. The agreement was signed by Pistell on behalf of Intercapital and by Blackman on behalf of Vencap. This money was, in turn, loaned to Conservative Capital, Ltd., a company also controlled by Pistell. As collateral, Conservative Capital gave Intercapital the right to purchase 75,000 shares of Chibex Ltd. stock, a company controlled by Conservative Capital (pp. 227-234 of Deposition). Vencap has also loaned Chibex $80,000 (p. 239 of Deposition). Coincidentally, Pistell is an officer and director of Chibex (p. 7, 9 of Deposition).

The Need for Immediate Relief

28. On November 8, 1973, the SEC sent a letter to

Pistell stating that the $3,000,000 transferred to Vencap from IIT was encompassed within a preliminary injunction filed in the United States District Court, Southern District of New York. The letter read:

"Dear Mr. Pistell: — 48A

"Enclosed is a copy of an injunction filed on November 8, 1973 in the United States District Court for the Southern District of New York.

"We wish to inform you, if you have not already been so informed, that from October 1972 onward, all monies paid by IIT and [sic] International Investment, or by IIT Management Company, S.A. on behalf of IIT, in Vencap Limited, fall within the terms of this injunction and their transfer or disposition is enjoined.

"We trust and expect that these monies, as well as any assets acquired with monies before you received notice of the court's injunction, are being kept intact, since you will be held responsible for them.

"You are further advised that transfer or disposition of these monies, as well as any assets acquired with these monies before you receive notice of the court's injunction, may constitute a contempt of the court's injunction, signed by Marvin Jacob" (pp. 258-259 of Deposition)."

29. Even though Pistell has been on notice of a preliminary injunction designed to protect the assets of IIT, Pistell has continued to freely expend the $3,000,000 on the advice of his counsel, Havens, Wandless, that the injunction does not apply to Pistell or Vencap:

"MR. TAYLOR: As Mr. Glavin has previously advised you, we do not agree and we have not--we have advised our client we do not agree with this position that he is subject to this injunction." (pp. 259-260 of Deposition)

30. Further, there is a strong likelihood that the activities of Pistell will continue unabated, thereby further dissipating the assets of IIT transferred to Vencap. Numerous

sworn statements by Pistell create this concern:

"Q. What opportunities has he [Blackman] brought to you?

A. Numerous opportunities which -- we are looking at a very -- at the moment a -- the growing of various crustaceans in the Caribbean through genetics, which looks like it could be a very substantial opportunity for us. (p. 33 of Deposition)

* * *

"Q. Are there any transactions that you propose to enter into for Vencap?

A. We are looking at a number of transactions at the moment . . . (p. 148 of Deposition)

Q. Are there any transactions which would call for investments by Vencap in an amount exceeding $150,000 which you are contemplating now?

* * *

"A. At the moment, Bob, I can't answer that question. We're looking at maybe a dozen situations that could take anywheres from 50,000 to a million dollars, you know" (pp. 148-149 of Deposition)

Q. Now, is it likely that within the next month Vencap will enter into any transactions which will require it to invest more than $50,000?

A. Yes, Bob, that is a possibility.

Q. I didn't ask for what was possible; I asked for what was -- if it was likely.

* * *

"Q. Is it?

A. I could say, in the next --

Next when, Bob?

Q. Month.

A. I would say, in the next month, it could easily have that much of a commitment.

For instance, if we're successful in the endeavors of our importation of Turkish it will have to give a letter of credit, substituted letter of credit which would be backed by firm orders. Do you follow me?

But that's just a letter of credit.

Q. Are there any other examples?

A. If we are successful in Africa, we would have to put money up for the concession there" (pp. 151-152 of Deposition).

31. Additionally, within the last two months Pistell has had $706,000 of Vencap transferred out of this country:

"Q. This cash of $706,000 is now available?

A. That is correct.

Q. Where is that, by the way?

A. I believe it's in a CD.

Q. Where?

A. I will have to check and find out.

Q. You don't know which bank?

A. Bank of Commerce.

Q. In New York?

A. Right.

April 30th.

Q. In whose name is it?

A. Vencap -- No, Intervent, excuse me.

Q. Intervent?

A. Right.

Q. And how many days is that certificate of deposit?

A. I don't know, Bob. I will check that. (pp. 153-154 of Deposition)

* * *

"Q. And the proceeds of that loan actually are in the Bank of Commerce in New York presently; is that correct?

A. They were in commercial paper as of the last time I looked.

THE WITNESS: Is that correct?

MR. TAYLOR: They are now in CD in Canada.

Q. At the Bank of Commerce?

A. At the Royal Bank of Canada, in Canada.

THE WITNESS: Montreal.

Q. Yesterday when you said Bank of Commerce you were mistaken?

MR. TAYLOR: As of the 30 it was correct.

A. After that it went to the Royal Bank in a CD.

Q. Where are they, presently?

A. At the Royal Bank of Montreal in a CD.

Q. The Royal Bank of Montreal, what branch?

A. Royal bank of Canada.

* * *

Q. When did you place that certificate of deposit?

MR. TAYLOR: Within the last--it was after the 30th. It must have been about the 2nd or 3rd." (pp. 216-217 of Deposition)

32. From the foregoing, it is evident that Pistell, who controls Vencap, has plans for spending within the next month substantial amounts of the IIT cash transferred to Vencap. The only possible manner by which the defendants might be prevented from continuing to dissipate the assets of IIT transferred to Vencap is the granting of this temporary restraining order and, after a hearing, the granting of a preliminary injunction and the appointment of a temporary receiver.

33. Plaintiffs seek a Temporary Restraining Order and Preliminary Injunction because of the concern that any delay will give the Pistell Group the time to further dissipate IIT's monies transferred to Vencap. Plaintiffs also believe that such dissipation of assets is occurring at the present time. Time is of the essence and plaintiffs will be irreparably injured until the misconduct of defendants is immediately restrained.

34. The bond required by Rule 65(c), F.R.C.P. should

be in an amount no greater than $4,000, the total common stock equity of Pistell and Blackman. All the substantial assets of Vencap are assets purchased with the $3,000,000 IIT transferred to Vencap. Pistell, Blackman and the other defendants have no significant economic interests in the IIT assets which remain in Vencap. Plaintiffs are court appointed liquidators and a large bond would be costly, thus reducing the eventual recovery by IIT's shareholders who are the victims of the IOS debacle.

35. No previous application has been made for the relief sought herein or for any similar relief.

WHEREFORE, deponent respectfully requests that plaintiffs' motion be granted and a temporary restraining order be entered pending determination by the Court of plaintiffs' notice for a preliminary injunction or until further order of this Court, and for such other and further relief as to this Court seems just and proper.

Eugene R. Anderson

Sworn to before me this

day of June, 1974.

Notary Public

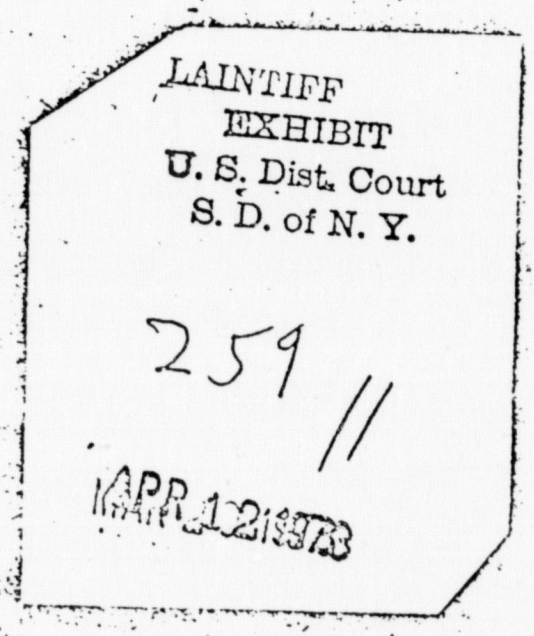
LEON B. KELLNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4556767
Qualified in New York County
Term Expires March 30, 1975

Exhibits to Affidavit of

EUGENE R. ANDERSON

in Support of Order to
Show Cause

54A



The First General Meeting of the members, as Incorporators, of the above-named Company was held by order of the Directors of the said Company at Building No. 309, Bay Street, Nassau, Bahamas on the 4th day of July, A.D., 1972 at 3.00 o'clock in the afternoon.

All of the Incorporators were present, namely:-

Anthony Nomikos Klonaris,

Jeremy Carson James Waddell,

Evelyn Priscilla Bradley,

Joan Lynn Thompson, and

Mavis Edna Seymour.

On motion, Mr. Anthony Nomikos Klonaris took the Chair and Mr. Jeremy Carson James Waddell acted as Secretary of the meeting.

The Chairman informed the meeting that the Company had been incorporated earlier that day and he presented the Certificate of Incorporation together with certified copies of the Memorandum and Articles of Association.

On motion duly made and seconded, Messrs. Richard C. Pistell, Ernest Raymond Lawson, Charles Murphy and Jeremy Carson James Waddell were elected Directors of the Company for the ensuing year.

On motion duly made and seconded, Mr. Richard C. Pistell was elected President and Treasurer of the Company for the ensuing year.

On motion duly made and seconded, Mr. Ernest Raymond Lawson was elected Vice-President and Assistant Secretary of the Company for the ensuing year.

On motion duly made and seconded, Mr. Charles Murphy was elected Secretary of the Company for the ensuing year.

On motion duly made and seconded, Mr. Jeremy Carson James Waddell was elected Assistant Secretary of the Company for the ensuing year.

On motion duly made and seconded, it was resolved that the seal impressed in the margin hereof be adopted as the Common Seal of the

Registered Office of the Company be situate in Building No. 309 on the North side of Bay Street in the City of Nassau, and that the necessary sign be displayed outside of the said Building.

On motion duly made and seconded, it was resolved that an Assistant Secretary be instructed to notify the Registrar General of the situation of the Registered Office and to have the same advertised in the Official Newspaper.

The Assistant Secretary presented a form of share certificate to the meeting, and, on motion duly made and seconded, the same was approved and it was resolved that the Directors be authorised to issue the shares in accordance with the provisions of the Articles of Association ofthe Company.

On motion duly made and seconded, it was resolved that an Assistant Secretary be instructed to file the Annual Statement required by Section 23 ofThe Companies Act with the Registrar General.

On motion, the meeting adjourned.

Chairman.

Assistant Secretary.

VENCAP LIMITED

The First General Meeting of the members, as Incorporators, of the above-named Company will be held at Building No. 309, Bay Street, Nassau, Bahamas on the 4th day of July, A.D., 1972 at 3.00 o'clock in the afternoon.

Dated the 4th day of July, A.D., 1972.

_____
Director

_____
Director

_____
Director

_____
Director

58A

Reg. No. 19,057/72

Nassau, Bahamas.

4th July, 1972.

The Registrar General,

Nassau.

Sir,

Pursuant to the provisions of Section 33 of The Companies Act I have the honour to inform you that the Registered Office of VENCAP LIMITED is situate in Building No. 309 on the North side of Bay Street in the City of Nassau.

Yours obediently,

Assistant Secretary,
VENCAP LIMITED.

59A

NOTICE

Pursuant to the provisions of Section 33 of The Companies Act, notice is hereby given that the Registered Office of VENCAP LIMITED is situate in Building No. 309 on the North side of Bay Street in the City of Nassau, Bahamas.

CARSON, LAWSON & CO.,
Attorneys for the above-named Company.

3 insertions please.

VERCAP LIMITED

60A
STATEMENT

made up to the 18th day of July 19 72

being the fourteenth day succeeding the day of the Ordinary general meeting

of the First Ordinary general meeting in 19 72 , showing the following particulars:

Surnames and Christian Names of Members of Company	Addresses	Occupations	Shares held by each
Klonaris, Anthony Nomikos	Nassau, Bahamas	Attorney-at-Law	1
Waddell, Jeremy Carson James	" "	Solicitor	1
Bradley, Evelyn Priscilla	" "	Clerk	1
Thompson, Joan Lynn	" "	Clerk	1
Seymour, Mavis Edna	" "	Clerk	1

1. Amount of capital.	U.S.$5,000
2. Number of shares into which capital is divided.	5,000 shares of U.S.$1 each
3. Number of shares taken from commencement of company to date.	5
4. Amount of calls made on each share.	Fully paid
5. Total amount of calls received.	Fully paid
6. Total amount of calls unpaid.	Nil.
7. Total amount of shares forfeited.	Nil.

Persons who have ceased to be members since last return was made.

Names	Addresses	Occupations	Shares held by each
N I L.			

(Turn over

COPY OF REGISTER SHOWING THE NAMES, ADDRESSES AND OCCUPATIONS OF DIRECTORS OR MANAGERS

Richard C. Pistell, Nassau, Bahamas, Executive; President, Treasurer and Director,

Ernest Raymond Lawson, Nassau, Bahamas, Attorney-at-Law; Vice-President, Assistant Secretary and Director,

Charles Murphy, 99 Park Avenue, New York, U.S.A., Executive; Secretary and Director, and

Jeremy Carson James Waddell, Nassau, Bahamas, Solicitor; Assistant Secretary and Director.

Assistant Secretary.

N.B.-This statement must be sealed with the Company's Seal

Changes in directors or managers must be notified from time to time as they occur.

No. 19,057/72

BAHAMA ISLANDS, — 62A

NEW PROVIDENCE

I, SYLVIA ANITA BONABY, Deputy,

Registrar General for the Bahama Islands, do hereby certify that a Memorandum of

Association of VENCAP LIMITED

has this day been registered in my office under the

provisions of The Companies Act (Ch. 184)

Whereby the said Parties have become and are an incorporated Company under the

name and style of VENCAP LIMITED

And I further certify that the Liability of the said Company is Limited

Given under my hand at the City of Nassau the 4th day of

July, A.D., 19 72.

Sylvia A. Bonaby

Deputy Registrar General.

Off'r Ex Pltff 45

63A

CORPORATE RESOLUTIONS

BANK OF COMMERCE
NEW YORK

EXHIBIT B

CORPORATE RESOLUTIONS — 64A

I, as Secretary of Intervent, Inc. ..... a corporation duly organized and existing under the laws of the State of Delaware , having its principal office at Lyford Cay, Nassau, Bahamas ..... hereby certify to the BANK OF COMMERCE that a meeting of the Board of Directors of said corporation was duly called and held on the 14th day of November 1973, that at said meeting a quorum was present and voting throughout, and that the following resolutions on motion duly made and seconded were unanimously adopted and are now in full force and effect:

"RESOLVED, that the BANK OF COMMERCE (hereinafter referred to as the "Bank") be and hereby is designated as a depositary of this corporation and that the officers and agents of this corporation be and hereby are, and each of them hereby is, authorized to deposit any of the funds of this corporation in said Bank either at its main office or any of its branches.

RESOLVED, that until the further order of this Board of Directors, any funds of this corporation deposited in said Bank be subject to withdrawal or charge at any time from time to time upon checks, notes, drafts, bills of exchange, acceptances, undertakings, or other instruments or orders for the payment of money when made, signed, drawn, accepted or endorsed on behalf of this corporation, by any one (Insert "one" or "two") of the following:

NAME	TITLE
Richard C. Pistell	President & Treasurer
David G. Taylor	Secretary

RESOLVED, that the Bank is hereby authorized to pay any such instrument or make any such charge and also to receive the same from the payee or any other holder without inquiry as to the circumstances of issue or the disposition of the proceeds even if drawn to the individual order of any signing person, or payable to said Bank or others for his account, or tendered in payment of his individual obligation, and whether drawn against an account in the name of this corporation or in the name of any officer or agent of this corporation as such.

RESOLVED, that any one (Insert "one" or "two") of the following:

NAME	TITLE
Richard C. Pistell	President & Treasurer
David G. Taylor	Secretary

are hereby authorized on behalf of this corporation:

1. To borrow money and to obtain credit for this corporation from the Bank on any terms and to make and deliver notes, drafts, acceptances, instruments of guaranty, agreements and any other obligations of this corporation therefor in form satisfactory to the Bank.

2. To pledge or assign and deliver, as security for any money borrowed or credit obtained, stocks, bonds, bills receivable, accounts, mortgages, merchandise, bills-of-lading, warehouse receipts, insurance policies, certificates, and any other property held by or belonging to this corporation with full authority to endorse, assign or guarantee the same in the name of this corporation.

authority to endorse the same in the name of this corporation.

4. To withdraw from the Bank and give receipt for, or to authorize the Bank to deliver to bearer or to one or more designated persons, all or any documents and securities or other property held by it, whether held as collateral security or for safekeeping or for any other purpose.

5. To authorize and request the Bank to purchase or sell for account of the corporation stocks, bonds and other securities, and

6. To execute and deliver all instruments required by the Bank in connection with any of the foregoing matters and affix thereto the seal of this corporation.

RESOLVED, that the Secretary or any other officer of this corporation be, and hereby is, authorized to certify to the Bank the names of the present officers of this corporation and other persons authorized to sign for it and the offices respectively held by them, together with specimens of their signatures, and in case of any change of any holder of any such office or holders of any such offices, the fact of such change and the names of any new officers and the offices respectively held by them, together with specimens of their signatures; and the Bank be, and hereby is, authorized to honor any instrument signed by any new officer or officers in respect of whom it has received any such certificate or certificates with the same force and effect as if said officer or said officers were named in the foregoing resolutions in the place of any person or persons with the same title or titles.

RESOLVED, that the Bank be promptly notified in writing by the Secretary or any officer of this corporation of any change in these resolutions and that until it has actually received such notice in writing it is authorized to act in pursuance of these resolutions, and that until it has actually so received such notice it shall be indemnified and saved harmless from any loss suffered or liability incurred by it in continuing to act in pursuance of these resolutions, even though these resolutions may have been changed."

I FURTHER CERTIFY that there is no provision in the Charter or By-Laws of the said corporation limiting the power of the Board of Directors to pass the foregoing resolutions, and that the same are in conformity with the provisions of said Charter and By-Laws.

I FURTHER CERTIFY that the present officers of said corporation and the offices respectively held by them are as follows:

NAME	TITLE	RESIDENCE ADDRESS
Richard C. Pistell	President & Treasurer	Lyford Cay, Nassau, Bahamas
David G. Taylor	Secretary	232 E. 53red Street New York, N.Y. 10022
Philip H. Gitlen	Assistant Secretary	310 West End Avenue New York, N.Y. 10023

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of said corporation and affixed the corporate seal this 16th day of November 1973.

David G. Taylor
As Secretary of the said Corporation

(CORPORATE SEAL)

(Snd.) Philip H. Gitlen
Other Officer

Assistant Secretary
Title

*NOTE: In case the Secretary or other recording officer is authorized to sign checks, notes, etc., by the above resolutions this certificate must also be signed by a second officer of the corporation.

MINUTES OF THE FIRST MEETING

OF

THE BOARD OF DIRECTORS

OF

INTERVENT, INC.

66A

The First Meeting of the Board of Directors of Intervent, Inc. (the "Company") was held on November 14, 1973 at 10:00 in the forenoon at the offices of Havens, Wandless, Stitt & Tighe, 99 Park Avenue, New York, New York 10016. The sole director, Richard C. Pistell, was present. David G. Taylor, counsel to the Company, and Secretary, was present by invitation.

The meeting was organized by the election of Mr. Pistell as Chairman and Mr. Taylor as Secretary of the meeting.

Waiver of Notice

The Chairman directed that a Consent and Waiver of Notice of Meeting be filed with the minutes.

Approval of Incorporator's Statement

The Statement of the Sole Incorporator of Intervent, Inc. dated November 14, 1973 was presented and read by the Secretary. On motion duly made and carried, it was unanimously

> RESOLVED, that the Statement of the Sole Incorporator, dated December 14, 1973 which has been presented and read to this meeting, be and hereby is in all respects approved, and that all action of every nature shown thereby to have been taken and authorized be and hereby is in all respects approved, ratified, and confirmed.

The Chairman then presented a proposed form of By-Laws which had been prepared by Mr. Taylor and on motion duly made and carried, it was unanimously

RESOLVED, that the By-Laws presented at this meeting be and they hereby are adopted as and for the By-Laws of this Company and that the same are ordered incorporated in the Company's minute book.

Election of Officers

The meeting then proceeded to the election of officers of the Company, each to hold office until his successor shall have been appointed and shall have qualified or as otherwise provided in the By-Laws.

Nomonations having been made, the following persons were unanimously elected:

Richard C. Pistell	-	President - Treasurer
David G. Taylor	-	Secretary
Philip H. Gitlen	-	Assistant Secretary

Seal

The Secretary then submitted to the meeting a seal proposed to be used as the corporate seal of the Company. On motion duly made and carried, it was unanimously

RESOLVED, that the form of seal submitted to this meeting be, and it hereby is, adopted as the corporate seal of the Company and that an impression of said seal be made in the margin of these Minutes.

The Secretary then presented to the meeting a form of stock certificate for the common stock of the Company, as well as the share and transfer book of the Company. On motion duly made and carried, it was unanimously

RESOLVED, that the form of stock certificate and the share and transfer book which have been presented to this meeting be and hereby are adopted as the certificate to represent the common stock of the Company and as the share and transfer book of the Company, and that a specimen of the stock certificate be annexed to the minutes of this meeting as Exhibit A.

Bank Account

The Chairman then reported that it would be desirable to open a bank account on behalf of the Company with the Bank of Commerce, and on motion duly made and carried, the resolutions appearing on the form annexed to these minutes were unanimously adopted.

Fiscal Year

The Chairman then proposed as provided for in the By-Laws, the Board of Directors establish a fiscal year for the Company.

On motion duly made and carried, it was unanimously

RESOLVED, that the Company establish a fiscal year beginning on August 1 and ending on July 31 for the keeping of books of record for the Company

The Chairman announced that he had received an offer from Ven-Cap, Ltd. to purchase all of the Authorized stock of the Company at a price of $200 per share, or the aggregate of $200,000.

On motion duly made and carried, it was unanimously

RESOLVED, that the Company accepted the offer of Ven-Cap, Ltd. to purchase 1,000 shares of the Company's common stock without par value, at the price of $200 per share.

Purchase of Interest in Oil and Gas Leases

The Chairman then stated that he felt it was in the best interest of the Company to purchase a 42% interest in certain oil and gas leases from Flag-Redfern Oil Company ("Flag-Redfern"), which were acquired by Flag-Redfern pursuant to an agreement with Mr. David Bintliff dated October 12, 1973. Upon motion duly made and carried, it was unanimously

RESOLVED, that the Company shall purchase by way of assignment, from Flag-Redfern Oil Company ("Flag-Redfern"), a 42% interest in certain oil and gas leases acquired by Flag-Redfern from David Bintliff pursuant to an agreement dated October 12, 1973, at the aggregate price of approximately $875,000 plus accrued interest from October 12, 1973 to the date of the closing; and

FURTHER RESOLVED, that the Secretary of the Company, David G. Taylor, Esq., be and he hereby in authorized and directed, in the name and on behalf of this Company, to execute and deliver to Flag-Redfern and/or its bank one or more checks in the aggregate amount of the purchase price for such 42% interest together with such agreements,

receipts and closing documents which shall contain such terms and provisions and be in such form, as Mr. Taylor shall approve, his execution thereof to be conclusive evidence of such approval and the authorization thereof; and

70A

FURTHER RESOLVED, that E. W. Sampson, Jr., be and he hereby is elected an Assistant Secretary of the Company and is authorized to authenticate and execute the foregoing documents on behalf of the Company; and

FURTHER RESOLVED, that David G. Taylor, Secretary of the Company, be, and he hereby is, authorized and empowered in the name and on behalf of this Company to take all such action as he may consider necessary and appropriate in order to carry out the foregoing resolutions.

Loan from Intercapital, N.V.

The Chairman reported that he had arranged for a loan to the Company from Intercapital, N.V. so as to provide the necessary capital to finance the acquisition of the oil and gas leases which were previously authorized. Upon motion duly made and carried, it was unanimously

RESOLVED, that the Company borrow from Intercapital, N.V. the amount of $700,000 and the officers of the Company are hereby authorized and directed to issue the Company's promissory note in the principal amount of the loan on such terms as are set forth in the form of promissory note attached hereto as an exhibit.

The Chairman also stated that Ven-Cap, Ltd. has agreed, in consideration of the granting of the aforementioned loan to the Company, to pledge the shares of the Company which it has acquired as security for the repayment of the loan.

Adjournment

There being no further business to come before the meeting, the meeting, upon motion, adjourned.

David G. Taylor

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That I, Richard C. Pistell, 812 Fifth Avenue, New York, New York,
(insert name and address of the principal)

do hereby appoint Charles E. Murphy, Jr., 99 Park Avenue, New York, New York OR David G. Taylor, 99 Park Avenue, New York, New York,
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

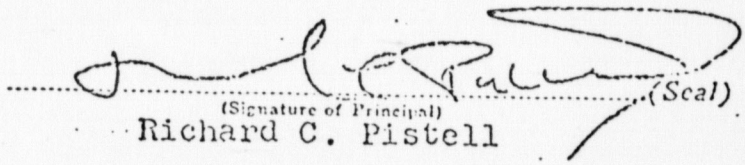
(A) real estate transactions;	[ ]
(B) chattel and goods transactions;	[ ]
(C) bond, share and commodity transactions;	[ ]
(D) banking transactions;	[ ]
(E) business operating transactions;	[ ]
(F) insurance transactions;	[ ]
(G) estate transactions;	[ ]
(H) claims and litigation;	[ ]
(I) personal relationships and affairs;	[ ]
(J) benefits from military service;	[ ]
(K) records, reports and statements;	[ ]
(L) all other matters;	[ ]

EXHIBIT D

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, I have hereunto signed my name and affixed my seal this 4th day of October, 1971.

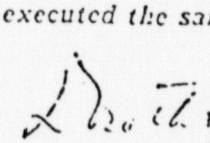


(Signature of Principal) (Seal)

Richard C. Pistell

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 4th day of October, 1971 before me personally came Richard C. Pistell to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



DOROTHY R. EATON
Notary Public - State of New York
No. 41-1955058 Queens County
Cert. Filed in New York County
Term Expires March 30, 1973

74A

PLAINTIFF
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

278

APR 12 1973

VEN-CAP LIMITED

P. O. BOX N-4645 · NASSAU, BAHAMAS
TELEPHONE 21381

RICHARD C. PISTELL
Chairman of the Board

75A

The within Memorandum is submitted in connection with the private placement of securities referred to herein and may not be reproduced or used in whole or in part for any other purpose.
or

TO: International Capital Investments (Sterling) Limited
5 Grafton Street,
London W.1.

Attention: Mr. Stanley Graze

Private placement of Preferential Shares of Ven-Cap Limited, 30,000 Redeemable Preference Shares of US$100 each plus three year warrants to purchase a further 30,000 of such shares.

Ven-cap Limited ("the Company") is a non-resident Bahamian company formed under The Companies Act of the Bahamas and designated as such in accordance with Section 41(2) of the Exchange Control regulations of the Bahamas. Exchange Control permission for the incorporation of the Company and the issuance of shares under Regulation 8 has been obtained from the Bahamian Monetary Authority.

The Company was initially formed of a nominal capital of US$5,000 with ordinary common shares of US$1 par being issued therefor. A total of 5,000 such shares are authorized and outstanding. The primary purpose for organizing the Company was to afford a vehicle for knowledgeable investors of a limited number to participate through 'preferential capital investment' in a sophisticated investment program with respect to growth opportunities throughout the world. Management (see this topic below) offers a broad international and financial experience in venture capital programs.

The Company's purpose and philosophy are directed toward the sound investment of preferential capital utilizing management's contacts and experience in growth opportunities which are designed to reflect both short and long term returns on investment.

The principal stockholders of the Company are:- Amaury de Riencourt, an internationally known Investment Banker and Counsellor, resident in Paris and Richard C. Pistell, another internationally known Investor, Financial Consultant and Manager whose broad experience includes airline financing.

In addition, the Company is currently negotiating for the acquisition of an equity and debt position in a leading Caribbean air carrier with routes into Miami and other ports in Florida. Such an air carrier, whose name cannot at this juncture be disclosed pending conclusion of negotiations, is on the verge of introducing jet service to certain of its domestic and foreign routes. But, significantly, even in the absence of jet service with which it must compete with such international carriers as Pan Am and Eastern, such carrier has earned in excess of $350,000 in the past six months commencing March of 1972. The Company is contemplating an investment consisting of debt and equity of up to $1,500,000 which it believes will significantly contribute to the strengthening of operations and earnings of the air carrier and offers real prospects for early and substantial return on the Company's investment. This is just one of the several outstanding prospects which the Company is contemplating and which, through the utilization of the initial preferential capital investment of assets acquired therewith, will enable the Company to establish a broad investment base designed to offer, as noted above, short and long term returns which will inure primarily to the benefit of the preferential capital

investors. The Company proposes to offer on a very limited basis an aggregate initially of $3,000,000 in preferred shares. The capital realized from such offering is what is herein referred to as the 'preferential capital investment'. The preferential rights attributable to such shares are set forth in a resolution of the Company dated 31st August, 1972, a copy of which is annexed hereto. In outline, however, such preferential shares will have dividend entitlement of 6 per cent payable as and when declared by the Board of Directors at the end of each fiscal year to the extent earnings are available therefor plus an additional dividend of up to one-third of the residual earnings, i.e., the net earnings after all expenses and taxes and the payment of the initial 6 per cent dividend.

In addition, subscribers to the preferred shares will receive warrants entitling them to subscribe for a period of three years on a pro rata basis to an additional $3,000,000 in preferred shares of the same class and preference as the initial subscription and at the same price notwithstanding that the book value or earnings of the Company at the time of the exercise of such warrants might otherwise require a higher price.

Inasmuch as this limited offering is being made to a select group of sophisticated investors it is perhaps unnecessary to point out that notwithstanding the solid management experience and background which the Company offers at this early stage in its development any investment must be viewed as speculative. The Company is aware that .. investment of the type herein offered is not for the ordinary investor but for the investor who recognizes that risk deserves a high return.

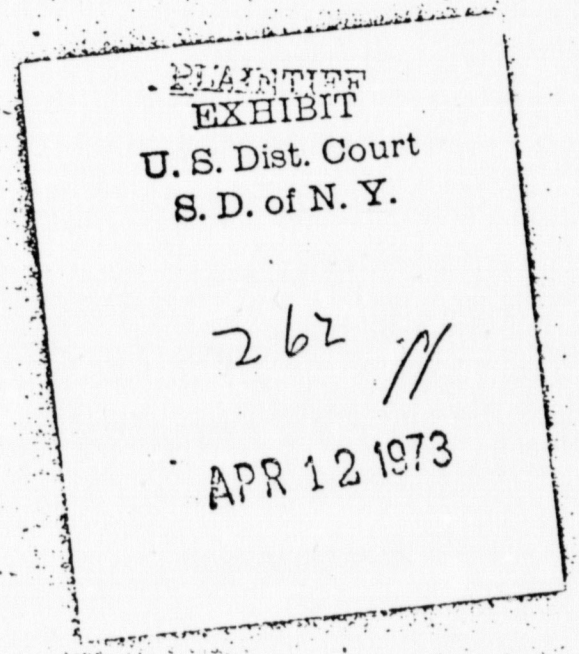


EXHIBIT F

September 29th , 1972

79A

Vencap Limited
P. O. Box 4645
Nassau, Bahamas

Gentlemen:

This will confirm our agreement as follows:-

(1) We hereby agree to subscribe to 30,000 Redeemable Preference Shares of par value U.S.$100 each (the "Shares") of Vencap Limited (the "Company") and to acquire warrants to acquire an additional 30,000 Shares at any time during a three year period commencing on the date of the closing hereunder (the "Warrant"), all for an aggregate purchase price of U.S.$3,000,000 (the "Purchase Price").

(2) The acquisition of the Shares and the Warrants shall take place on October 6 , 1972 or such other date as shall be agreed upon (the "Closing").

(3) You hereby represent and warrant to us that:

(a) the Company is a company duly organized validly existing and in good standing under the laws of the Commonwealth of the Bahamas Islands with full power and authority to carry on its business and own its property in the manner in which such business is carried on and such property is owned; there are no subsidiaries of the Company on the date hereof;

(b) the capital of the Company is U.S.$3,010,000 divided into 10,000 Ordinary Shares of U.S.$1.00 each and 30,000 Redeemable Preference Shares of U.S.$100 each, of which 5,000 Ordinary Shares and 30,000 Redeemable Preference Shares will be outstanding after giving effect to the provisions of this Agreement;

(c) the Company and the Shareholders thereof have taken all necessary and appropriate action to

80A

authorize this Agreement and to perform its obligations hereunder and this Agreement, the Warrant and the Shares each constitute a valid and binding obligation of the Company;

(d) the shareholders of the Company have adopted resolutions substantially in the form annexed hereto as Exhibit A establishing the rights of the holders of Redeemable Preference Shares;

(e) as of the Closing the Shareholders of the Company shall have adopted resolutions authorizing the Company to execute and deliver a Warrant, substantially in the form annexed hereto as Exhibit B and such Warrant shall constitute the valid and binding obligation of the Company, and its shareholders to make any necessary increases in the capitalization of the Company and to issue the requisite shares upon exercise of the Warrant.

(4) At the Closing, we shall deliver the Purchase Price to you against delivery by you to us of (a) certificates representing the Shares, registered in our name or that of our nominee, (b) the Warrant, (c) a certificate of the President of the Company together with the Secretary of the Company to the effect that the representation and warranties contained in paragraph 3 of this Agreement are true and correct as of the Closing, as if made at the Closing, and (d) copies of the resolutions referred to in paragraph 3 (d) and 3 (e) of this Agreement, certified by the Secretary of the Company.

If the foregoing is in accordance with our understanding, kindly countersign the enclosed copy of this letter at which time a binding agreement shall exist between us.

Very truly yours,

IIT. Management Company, S.A.
on behalf of IIT, an
International Investment Trust

By _____

By _____

Accepted and Agreed:

Vencap Limited

By _____

PLAINTIFF
EXHIBIT
S. Dist. Court
S. D. of N. Y.
R 10 1973

81A

ATT: MR LOMBORAY - ODB(LUX).

C C AMERICAN NATIONAL BANK ATT: H SCHMIDT.
C C B C B NASSAU BAHAMAS ATT: MARION MARVIN.

REF: IIT FUND,

VALUE OCTOBER 6,1972.
PLEASE WITHDRAW DLRS 4 (FOUR) MILLION FROM THE FUNDS HELD FOR THE ACCOUNT OF I I T IN YOUR ACCOUNT AT AMERICAN NATIONAL AND TRANSFER TONNBI$ B NASSAU, TO BE HELD O
1 RPT ....
TO BE HELD ON DEMAND AN INTEREST BEARING CALL ACCOUNT / DESIGNATED" O.D.B LUXEMBOURG FOR THE ACCOUNT OF I I T, REFERENCE VENCAP DLRS 3 (THREE) MILLION AND GULFSTREAM DLRS 1 (ONE) MILLION. WRITTEN CONFIRMATION FOLLOWS.
TEST KEY 23.99.

RAYMOND W FELL/ MARJORIE PINNEY
AUTHORIZED SIGNATORIES

Custs Set Up 10/5

Payment dist ODB To BCB Nassau 10/6

1250/EC

Assets Set Up 10/6

ALTRUST LONDON
251 ODBLUX L

TT
OK RCVD KTKS WILL REVET ASAP...

EXHIBIT G

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

82A

267

APR 12 1973

I.I.T. MANAGEMENT COMPANY S.A.

October 9, 1972

Bahamas Commonwealth Bank Limited
Charlotte House
Nassau, Bahamas

Gentlemen:

You are hereby instructed to pay from the funds held at your bank for the account of the undersigned, IIT, an International Investment Trust, to the account of Vencap Limited at your bank, the sum of U.S. $3,000,000.

Very truly yours,

IIT Management Company, S.A.
on behalf of IIT, an
International Investment Trust

By _____

EXHIBIT H

VENCAP LIMITED
P O BOX N 1170
NASSAU, BAHAMAS

TELEPHONE
74363

83A

May , 1973

Mr. Richard C. Pistell
Lytord Cay Club
Nassau, Bahamas

Dear Mr. Pistell:

This letter will serve to confirm our agreement with respect to the fee of $150,000 which was paid into the Company to facilitate the organization and initial funding of the company.

1. The Company will pay to you $100,000, which was the net amount of the fee to which you were personally entitled.

2. You will hold the Company harmless from any liability to third parties which may be asserted against the Company for brokerage or finder's fees in connection with the transaction resulting in the payment of the fee to the Company.

Please acknowledge your agreement in the space indicated below.

Very truly yours,

AGREED & ACCEPTED: VENCAP LIMITED

By: _____
Executive Vice President

_____
Richard C. Pistell

EXHIBIT I

Pl Flsex Pistol 4/A for I.D
5/6/74 JK

VENCAP LIMITED

BALANCE SHEET

AS AT APRIL 30, 1974

84A

UNAUDITED

ASSETS

CURRENT ASSETS		
Cash (Including Time Deposits of $1,305,000)		$1,342,956
Accrued Interest Receivable		39,000
Accounts Receivable		5,264
Trust Account		15,000
Loans Receivable		155,075
Salary Advances		25,000
TOTAL CURRENT ASSETS		$1,582,295
INVESTMENTS (AT COST)		
Securities	$905,149	
Turkish Wine Concession	32,728	
Other	19,000	
Liquidating Dividend Receivable	125,000	
TOTAL INVESTMENTS (AT COST)		1,081,877
Organization Expense		15,000
TOTAL ASSETS		$2,679,172

LIABILITIES AND STOCKHOLDERS' EQUITY

STOCKHOLDERS' EQUITY	
Capital Stock - Common	$ 4,000
- Preferred	3,000,000
	$3,004,000
Retained Earnings (Deficit)	(324,828)
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$2,679,172

FIELD, TIGER, KRELL & WERBER
CERTIFIED PUBLIC ACCOUNTANTS

EXHIBIT J

85A

Perfect Postal Corp.
5/1/74/K

CONSENT

VENCAP LIMITED, the sole stockholder of Intervent, Inc. (the "Company"), hereby consents to the Company's proposal that a loan in the amount of $55,000 be made to the President of the Company upon condition that if the loan is not repaid on or prior to December 31, 1974, the President shall grant to the Company or its designee a mortgage on his residence in Nassau, Bahamas equal to the amount due, and an option to purchase said residence at the President's cost therefor, all as more specifically set forth in the proposed letter agreement attached hereto.

VENCAP LIMITED

By Walter Buchanan
Executive Vice President

EXHIBIT K

INTERVENT INC.
303 Wall Towers West
Midland, Texas

86A

December , 1973

Mr. Richard C Pistell
Lyford Cay CLub
Nassau, Bahamas

Dear Mr. Pistell:

This letter will serve to confirm our understanding as follows:

The Company will lend you $55,000 subject to the following terms and conditions:

1. You are to execute a demand note in the form attached hereto.

2. If the loan is not repaid on or prior to December 31, 1974, you will grant to the Company or its designee a mortgage on your residence in Nassau, Bahamas, in an amount equal to the unpaid balance of the loan and an option (in the for annexed hereto) to purchase said residence from you at your original cost therefor.

3. Your demand note may be transferred or assigned by the Company or discounted at any bank.

Very truly yours,

INTERVENT INC.

By_____
President

AGREED:

_____
Richard C. Pistell

87A

PROMISSORY NOTE

US$55,000

FOR VALUE RECEIVED, the undersigned RICHARD C. PISTELL, hereby promises to pay to the order of INTERVENT, INC. 303 Wall Towers West, Midland, Texas ("Intervent), at the offices of Intervent in Nassau, Bahamas, the principal sum of Fifty Five Thousand U.S. Dollars (US$55,000) upon demand, with accrued interest computed at the rate of 8% per annum from the date hereof until the principal hereof has been declared and payable, and thereafter at the same rate per annum on any overdue principal and (to the extent legally enforceable) on any overdue interest until paid.

All such amounts are to be paid in lawful money of the United States of America.

The undersigned hereby waives presentment, demand, notice of dishonor and all other demands whatsoever and notices relating to the payment, collection or enforcement of this Note.

_____

Richard C. Pistell

OPTION AGREEMENT dated December , 1973, between INTERVENT INC. (the "Company") and R. C. Pistell ("Employee"), President of the Company.

WHEREAS, the Employee needs to make certain improvements in his residence in Nassau, Bahamas, which residence is used by the Company and its parent company as an office of the Company and of its parent company; and

WHEREAS, the Company desires to assist the Employee, who is serving the Company without compensation, in making such improvements in the office-residence.

NOW, THEREFORE, it is hereby agreed between the Company and Employee as follows:

In consideration of a loan in the amount of $55,000 to be made to the Employee, the Employee, subject to Paragraph 3 hereof, hereby grants an option to the Company to purchase his residence at the Lyford Cay Club, Nassau, Bahamas ("Residence") on the following terms and conditions:

1. In the event of the termination of the Employee's employment by the Company and its parent, Vencap Limited, other than by reason of the Employee's death, the Company shall have the right to purchase the Residence at the Employee's cost therefor (which shall be his original cost plus all amounts heretofore and hereafter expended for improvements on the Residence). The option may be exercised by the Company by giving thirty (30) days notice of the election to purchase the Residence and by tender to the Employee within sixty (60) days after such notice of certified or cashier's check in the amount of the purchase price therefor.

2. In the event of the Employee's death while he is employed by the Company or its parent, the Company shall advise the Employee's widow regarding the terms hereof and she shall have the right to occupy the Residence during her lifetime so long as payments of any mortgage on the Residence are paid by her. In the event that she does not elect to reside in the Residence after the Employee's death, she (or the Employee's executor) shall have the right to offer the Residence for sale and the Company shall have then the right to purchase the Residence for an amount equal to that offered by any unrelated third party during a period of thirty (30) days following the Company's receipt of notice of such offer.

3. This Agreement shall only become effective in the event that the Employee fails to pay the demand note evidencing his indebtedness to the Company on or prior to December 31, 1974. If the full amount due thereon is paid on or prior to December 31, 1974, this Agreement shall terminate automatically on the date on which the loan is paid in full.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Nassau, Bahamas as of the day first above written.

INTERVENT INC.

By_____
President

_____
Richard C. Pistell

90A

INTERVENT INC.
303 Wall Towers West
Midland, Texas

December 28, 1973

Mr. Richard C Pistell
Lyford Cay CLub
Nassau, Bahamas

Dear Mr. Pistell:

This letter will serve to confirm our understanding as follows:

The Company will lend you $55,000 subject to the following terms and conditions:

1. You are to execute a demand note in the form attached hereto.

2. If the loan is not repaid on or prior to December 31, 1974, you will grant to the Company or its designee a mortgage on your residence in Nassau, Bahamas, in an amount equal to the unpaid balance of the loan and an option (in the for annexed hereto) to purchase said residence from you at your original cost therefor.

3. Your demand note may be transferred or assigned by the Company or discounted at any bank.

Very truly yours,

INTERVENT INC.

By _____
President

AGREED:

_____
Richard C. Pistell

91A

Dec 28 1973

PROMISSORY NOTE

US$55,000

FOR VALUE RECEIVED, the undersigned RICHARD C. PISTELL, hereby promises to pay to the order of INTERVENT, INC. 303 Wall Towers West, Midland, Texas ("Intervent), at the offices of Intervent in Nassau, Bahamas, the principal sum of Fifty Five Thousand U.S. Dollars (US$55,000) upon demand, with accrued interest computed at the rate of 8% per annum from the date hereof until the principal hereof has been declared and payable, and thereafter at the same rate per annum on any overdue principal and (to the extent legally enforceable) on any overdue interest until paid.

All such amounts are to be paid in lawful money of the United States of America.

The undersigned hereby waives presentment, demand, notice of dishonor and all other demands whatsoever and notices relating to the payment, collection or enforcement of this Note.

Richard C. Pistell

) House

Payee	Check #	Amount	Advance	Salary		
Cristell	—	10000	10000			
e Hoover	4-14	700	700			
Long Horn Singer	17	53425	53425			
Cristell	—	40.00	40.00			
... Hubert Fabels	32	1248	1248			
Allen Wall Paper	33	111717	111717			
Cristell	37	6000	6000			
Cristell	—	5000	5000			
Hoover	48	1065	1065			
Swarbart & Co	61	34920	34920			
Tyn Kell Webb	31815	15000	15000			
Coy Co	—	11000	11000	(H)		
Harbs	—	518135	518135	(H)		
	31444	5000	5000	(H)		
Garden	31495	5000	5000	(H)		
Paley	54	1000	1000			
Cristell	31807	25000		25000		
Cristell	—	6000	6000			
To Total		1016406	766406	25000		
Cristell	31447	12000		12000		
	81753	5000		5000		
Lawson	81754	1004330	1004330	(H)		
Coy House Garden	81755	135108	135108	(H)		
Coast Co	81757	1010903	1010903	(H)		
Hoover Hoof	31467	1300	1300			
Cristell	31468	1181556	1181556			
	—	825	825			
Cristell	—	5000		5000		
Cristell	—	5000	5000			
Lemarde	4-14	625	625			
	—	500	500			
Poly Pen Comm	81763	73669	73669			
Coy	81765	185369	185369	(H)		
	81767	325	325			

Chap. Del. League	9	6687	6687		
Inland Expl. Wtd	177	146	146		
Pac Coy Const	81-174	77 1165	77 1165	(H)	
Pacific Expl.	81-179	54	54		
Cahill	—	8000		8000	
Inland Steel Subscription		2000	2000		
Supply Health		770	770		
to 7/31/73		1609559	1199559	55000	
Pacific Coy Const	167	26765	26765	(H)	
Reed Drum Kaiser Wilbur	168	20000	20000		
Pacific Coy Co	177	175106	175106	(H)	
" "	178	99714	99714	(H)	
Cahill	179	15000		15000	
"	183	5000		5000	
"	206	5000		5000	
"	213	5000		5000	
"	231	5000	5000		
to 11/31/73		3541014	2691014	85000	
Cahill	256	3000	3000		
Adjustments		(4608)	(4608)		
Total — to 9/3/74		3566406	2716406	85000	
Allowed					
1974 Disposition		101646			
1973 Compensation	60 110	210000			
1974 4 mos @ 5000		20000			
		331646			
Adams — salary allowance (1974)		25000	See B/Sheet		

5/24/73

EMPLOYMENT AGREEMENT

AGREEMENT made this 23rd day of May, 1973, by and between VENCAP LIMITED, a company organized and existing under the laws of the Commonwealth of the Bahama Islands (hereinafter referred to as the "Employer"), and RICHARD C. PISTELL (hereinafter referred to as the "Employee").

W I T N E S S E T H:

WHEREAS, the Employee is presently the President of the Employer; and

WHEREAS, the Employee has terminated his other business relationships, including his position as Chairman of the Executive Committee of Lincoln American Corporation, and has moved his home and business headquarters to the Bahama Islands at the request of the Employer; and

WHEREAS, the Employee desires to confirm his employment arrangements with the Employer in writing;

NOW, THEREFORE, in consideration of the promises and undertakings herein contained, the parties do agree as follows:

1. Employment and Duties. The Employer agrees to mploy the Employee for the term of the Agreement, as defined in aragraph 2 hereof, as Chairman of the Board of Directors and resident, to perform the functions and to exercise the powers of uch positions or such comparable executive functions and powers s may reasonably be assigned to him from time to time by the Board f Directors of the Employer, and the Employee agrees to accept uch employment on the terms and conditions set forth in this greement.

2. Term. Except in the case of earlier termination s hereinafter specifically provided, the term of this Agreement hall commence January 1, 1973, and shall terminate seven (7) ears thereafter, or on the date of the Employee's death, which-ver is sooner.

3. Compensation. The Employer agrees to pay the Employee for the services rendered by him pursuant to Paragraph 1 hereof (i) a salary in the amount of Sixty Thousand ($60,000) Dollars per nnum, payable in equal monthly installments at the end of each alendar month during the Agreement, and (ii) additional compensa-tion ("profit-sharing") equal to fifteen percent (15%) of the amount of Employer's net profits, as defined hereinafter, in respect of

each fiscal year of the Employer or part thereof, as the case may be, payable within one hundred twenty (120) days after the end of each fiscal year of the Employer.

95A

"Employer's net profits" shall mean the net earnings of the Employer, as determined by Employer's auditors. The certificate of the independent firm of public accountants regularly employed by the Employer in the audit of its books shall be conclusive and binding upon the Employer and the Employee with respect to the amount of Employer's net profits and the amount of any additional compensation payable to the Employee pursuant hereto.

4. Expenses. The Employee shall be reimbursed for those reasonable and necessary expenses incurred personally by him in rendering services pursuant to Paragraph 1 which are reimbursable under the Employer's general policy with regard to the reimbursement of such expenses then in effect upon presentation to the Employer by the Employee of appropriate vouchers evidencing such expenses or statements signed by him itemizing the expenses which he so incurred.

5. Reimbursement for Moving Expenses and for Cost of Purchase and Conversion of House. The Employer shall reimburse the Employee for those reasonable expenses incurred by the Employee in moving his home and business headquarters to the Bahama Islands, and the Employer shall pay all costs incurred by Employee in purchasing a house in the Bahama Islands and in converting same into an office and a residence provided, however, that the total amount to be paid by the Company in respect of the purchase price and the costs of renovating the house shall in no event exceed One Hundred Fifty Thousand ($150,000) Dollars.

6. Vacation. The Employer agrees to provide the Employee with a paid vacation of not less than four (4) weeks' duration during each calendar year during his employment pursuant to this Agreement, and in fixing the time of such vacation in any such year the Employer shall give effect to the Employee's reasonable request.

7. Death. In the event of the Employee's death duri

the term of this Agreement: — 97A

(a) the obligation of the Employer to pay the Employee compensation under Paragraph 3 hereof shall terminate upon payment of the installment of salary due for the calendar month in which the date of his death occurs; and

(b) the Employer shall, within ninety (90) days after the date of Employee's death, shall pay to the Employee's widow (or to the Employee's estate in the event that the Employee's wife has predeceased him or if the Employee is not married at the time of his death) an amount equal to the total compensation which has been paid or is payable to the Employee pursuant to Paragraph 3 hereof in respect of the calendar year immediately preceding the date of his death; provided, however, that such amount shall in no event be less than $60,000.

8. Disability. If during the term of this Agreement the Employee shall for a period of six (6) consecutive months fail to perform the duties required of him hereunder as a result of illness or other incapacity, the Employer shall be obligated to pay to the Employee the compensation due him for such period but may terminate this Agreement in its entirety by written notice to the Employee by the close of the last day of such period.

9. Restrictions. The Employee agrees that during the erm of this Agreement or at any time thereafter, he will not, ither directly or indirectly, divulge to anyone other than a person pecifically designated for this purpose by the Employer any con- idential information obtained by him while in the employ of the mployer.

10. Termination.

(a) The Employer may terminate the Employee's employ- ent hereunder by written notice to him and, if for any reason other than for just cause, by payment of the balance due him of the salary rovided in Paragraph 3 for the remainder of the term of this Agree- ent, and the balance of Employee's profit-sharing, which in such event shall be deemed to be equal to the greater of (i) Employee's profit-sharing in respect of the year immediately preceding the date of his termination or (ii) $25,000, for each year (or part thereof) remaining during the term of this Agreement.

(b) The Employee may terminate this Agreement at any time by written notice to the Employer, and the Employer's liability hereunder shall terminate at the end of the month in which such notice is received upon payment of the installment of salary due for the month in which such termination occurs.

(c) In the event that the Employer elects to terminate

his Agreement and the Employee or his legal representative contests the Employer's termination for cause or sues for payment under this paragraph and is sustained by a final decision, including any appeals thereof, of a court of law before which such issue has been tried, the Employer agrees to reimburse the Employee or his legal representative for all reasonable expenses, including legal fees, incurred by him or his legal representative in connection with such contest or lawsuit, in addition to paying the Employee the compensation due him under such final decision.

11. Approval. This Agreement shall become effective upon approval and ratification of this Agreement by the Board of Directors of the Employer.

12. Applicable Law. This Agreement and the interpretation and performance thereof shall be controlled exclusively by the laws of the Commonwealth of the Bahama Islands.

13. Notice. Any notice provided to be given pursuant to this Agreement shall be in writing and shall be deemed duly given when mailed by certified or registered mail to the party to receive such notice at the following address, or at such other address as such party may designate by notice similarly given:

To the Employer:

P.O. Box N-4645
Nassau, Bahamas

100A

To the Employee:

Lyford Cay Club
P.O. Box N-4776
Nassau, Bahamas

IN WITNESS WHEREOF, the Employer has caused this Agreement to be executed by its corporate officers thereunto duly authorized, and its corporate seal to be affixed thereto, and the Employee has executed this Agreement, all as of the day and year first above written.

VENCAP LIMITED

ATTEST:

By: _____
Executive Vice President

_____
Assistant Secretary

WITNESS:

_____
Richard C. Pistell

_____

AGREEMENT made this 22nd day of May , 1973, by and between VENCAP LIMITED, a company organized and existing under the laws of the Commonwealth of the Bahama Islands (hereinafter referred to as the "Employer"), and WALTER BLACKMAN (hereinafter referred to as the "Employee").

W I T N E S S E T H:

WHEREAS, the Employer has requested that the Employee become the Executive Vice President of the Employer; and

WHEREAS, the Employee desires to confirm his employment arrangements with the Employer in writing as a condition to his becoming the Executive Vice President of the Employer;

NOW, THEREFORE, in consideration of the promises and undertakings herein contained, the parties do agree as follows:

1. Employment and Duties. The Employer agrees to employ the Employee for the term of the Agreement, as defined

EXHIBIT N

in Paragraph 2 hereof, as Executive Vice President, to perform the functions and to exercise the powers of such position or such other executive functions and powers as may reasonably be assigned to him from time to time by the Board of Directors of the Employer, and the Employee agrees to accept such employment on the terms and conditions set forth in this Agreement.

2. Term. Except in the case of earlier termination as hereinafter specifically provided, the term of this Agreement shall commence on March 17, 1973 and shall terminate five (5) years thereafter, or on the date of the Employee's death, whichever is sooner.

3. Compensation. The Employer agrees to pay the Employee for the services rendered by him pursuant to Paragraph 1 hereof a salary in the amount of Twenty Thousand ($20,000) Dollars per annum, payable in equal monthly installments at the end of each calendar month during the Agreement.

4. Expenses. The Employee shall be reimbursed for those reasonable and necessary expenses incurred personally by him in rendering services pursuant to Paragraph 1 upon presentation to the Employer by the Employee of appropriate vouchers evidencing such expenses or statements signed by him itemizing

the expenses which he so incurred.

5. Death. In the event of the Employee's death during the term of this Agreement the obligation of the Employer to pay the Employee compensation under Paragraph 3 hereof shall terminate upon payment of the installments of salary due for the calendar month in which the date of his death occurs.

6. Disability. If during the term of this Agreement the Employee shall for a period of six (6) consecutive months fail to perform the duties required of him hereunder as a result of illness or other incapacity, the Employer shall be obligated to pay to the Employee the compensation due him for such period but may terminate this Agreement in its entirety by written notice to the Employee by the close of the last day of such period.

7. Restrictions. The Employee agrees that during the term of this Agreement or at any time thereafter, he will not, either directly or indirectly, divulge to anyone other than a person specifically designated for this purpose by the Employer any confidential information obtained by him while in the employ of the Employer.

8. Termination. The Employer may terminate the Employee's employment hereunder by written notice to

him and, if for any reason other than for just cause, by payment of the balance due him of the compensation provided in Paragraph 3 for the remainder of the term of this Agreement. The Employee may terminate this Agreement at any time by written notice to the Employer, and the Employer's liability hereunder shall terminate at the end of the month in which such notice is received.

In the event that the Employer elects to terminate this Agreement and the Employee or his legal representative contests the Employer's termination for cause or sues for payment under this paragraph and is sustained by a final decision, including any appeals thereof, of a court of law before which such issue has been tried, the Employer agrees to reimburse the Employee or his legal representative for all reasonable expenses, including legal fees, incurred by him or his legal representative in connection with such contest or lawsuit, in addition to paying the Employee the compensation due him under such final decision.

9. Applicable Law. This Agreement and the interpretation and performance of all of its terms shall be controlled exclusively by the laws of the Commonwealth of the Bahama Islands.

10. Notice. Any notice provided to be given

pursuant to this Agreement shall be in writing and shall be deemed duly given when mailed by certified or registered mail to the party to receive such notice at the following address, or at such other address as such party may designate by notice similarly given:

To the Employer:
P.O. Box N 4645
Nassau, Bahamas

To the Employee:
P.O. Box F2413
Sun Alliance Building
Freeport, Grand Bahama

IN WITNESS WHEREOF, the Employer has caused this Agreement to be executed by its corporate officers thereunto duly authorized, and its corporate seal to be affixed thereto, and the Employee has executed this Agreement, all as of the day and year first above written.

VENCAP LIMITED

ATTEST:

J. C. S. Darrell
Assistant Secretary

By Richard C. Kraus
President

WITNESS:

David E. Taylor

Walter Blackman
Walter Blackman

THE BANK OF NOVA SCOTIA

Scotia BANK

NASSAU BRANCH

NASSAU, BAHAMAS

81772

THE BANK OF NOVA SCOTIA

June 22, 1973

DATE

PAY TO ORDER OF Walter Bachmann

$ 20.00

SUM OF Twenty - Dollars

BAHAMAS DOLLARS

COLLECTION DEPT.

ASSAUVENCAP LTD.

ACCOUNT NUMBER 6600-35

BAHAMAS STAMP DUTY PAID

June 25

EXHIBIT O

HAVENS, WANDLESS, STITT & TIGHE

- 107A

WILLIAM BRITTON STITT (1893-1960)
HERBERT A. TIGHE (1910-1960)

CARROLL J. DICKSON
DAVID F. EDWARDS
CHARLES L. MURPHY, JR.
JAMES T. OLAVIN
ADELBERT C. MATTHEWS, JR.
JOHN C. ORAM, JR.
ALFRED A. MARRA
ALAN SIEGEL
BRADFORD P. COLCORD
JOHN E. MACAENTY
PAUL M. BROWN
LAURENCE E. POSNER
STEPHEN P. SIDEL
DAVID O. TAYLOR
JOHN R. ANTHOLIS

JOHN P. BERGER, JR.
OF COUNSEL

99 PARK AVENUE
NEW YORK, N. Y. 10016
(212) 986-5550

ITT TELEX: 423059
CABLE: "OPHLAW"

SEC. AND EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED
MAY 20 1974
CORPORATE REGULATION

May 17, 1974

BY HAND

Securities and Exchange Commission
Regional Office
26 Federal Plaza
New York, N.Y. 10007

Att: Marvin Jacob, Esq.

Re: SEC v. Robert L. Vesco, et al
72 Civ. 5001 (CES)

Gentlemen:

At the request of Bob Kushner, I am enclosing copies of the following documents:

1. Vencap's accountant's statement of amounts charged to Mr. Pistell as advances and salary.

2. Two letters addressed by the undersigned to John D'Alimonte, Esq., regarding legal documents relating to the $3 million of redeemable Vencap preference shares, namely -

   (a) letter dated September 21, 1972.

   (b) letter dated October 3, 1972 with enclosures.

3. Two agreements with Mr. Blackman dated May 22, 1973.

EXHIBIT P

4. The Promissory Note of Mr. Pistell, payable to Intercapital N.V., in the amount of $590,000.

5. A receipt from the Bahamas Commonwealth Bank for Vencap shares delivered to the bank upon the instructions of Mr. Pistell.

6. Power of Attorney from Mr. Pistell to Mr. Charles E. Murphy, Jr. or David G. Taylor, dated October 4, 1971.

7. Documents reflecting Mr. Pistell's payment for shares, namely -

   (a) (See line 41 of Item 1 above).

   (b) A xerox copy of Pistell's check payable to Intercapital N.V., dated March 2, 1973; Intercapital deposit slip dated March 2, 1973 and the Bank of Commerce statement reflecting said deposit.

8. Documents reflecting credit advices of Handelskredit-Bank relating to the deposit of approximately $1.3 million by Vencap Limited in said Bank and the disposition thereof:

   (a) Telex confirmation dated January 9, 1973 from Handelskredit-Bank acknowledging receipt of $600,000 deposit in favor of Vencap Limited.

   (b) A letter dated February 1, 1973 to Intercapital N.V. from Handelskredit-Bank advising of transfer of $590,000 to its account at the Bank of Commerce in New York.

   (c) The Trust Agreement dated November 15, 1973 (Exhibit 26) - there was no separate credit advice since the funds were transferred

from Vencap's New York account to a New York bank account of Handelskredit-Bank at First National City Bank.

(d) Two advices dated November 27, 1973 addressed to Intercapital N.V. from Handelskredit-Bank, reflecting transfer of $700,000 from Handelskredit-Bank to Intercapital N.V.

9. The following documents or invoices reflect specific Vencap disbursements:

(a) Letter from Mr. James M. Rae dated October 30, 1972 to Mr. Cerny, with attached invoice of Valicenti Leighton Reid & Pine, for legal services, addressed to Mr. Leland Rosemberg.

(b) Three Vencap Limited credit advices to Intercapital, in the amounts of $25,000, $200,000 and $125,000; and a Vencap check payable to Intercapital in the amount of $15,000.

(c) Field, Tiger, Krell & Werber invoice in the amount of $20,000, dated July 31, 1972.

(d) Statement of Minera Tangamanga (as at Jan. 10, 1973) re Vencap advances to Dr. Malouf with attached advice of Basham, Ringe & Correa (Mexican attorneys).

Mr. Kushner in his telephone conversation with Mr. James Glavin, also requested the following specific documents or invoices, which either have not yet been located or which may not exist:

(i) Receipt of Handelskredit-Bank for oil shares. (See enclosed copy of telex to Dr. Hieber re this subject.)

(ii) Documents or invoices reflecting Vencap disbursements regarding:

(1) Two payments made to Interstate Helicopter on 10/9/72 and during 3/73.

(2) A payment to Mr. Blackman during 4/73 of $5,000.

(3) A payment of $36,582 to Ambassador Benhima (copies of three documents relating to this transaction are enclosed, namely - a letter from Mr. Pistell to Schweickart & Co. dated November 10, 1972, a check payable to said firm in the amount of $49,437.88 and check No.81771 drawn in May 1973 representing payment of the balance due Ambassador Benhima with respect to the 18,600 Lincoln American shares purchased from him by Vencap Limited).

We expect to deliver the up-dating by Mr. Pistell of individuals with whom he has met since March 1974, early next week.

Best regards,

Sincerely yours,

David G. Taylor

Encs: (As listed)
DGT:na

cc: R. Kushner, Esq.
Security & Exchange Commission
Washington, D.C.

111A

5/1/74

HAVENS, WANDLESS, STITT & TIGHE

LLIAM BRITTON STITT (1898-1969)
RBERT A. TIGHE (1910-1960)

RROLL J. DICKSON
VID F. EDWARDS
HARLES E. MURPHY, JR.
MES T. GLAVIN
ELBERT C. MATTHEWS, JR.
HN C. GRAM, JR.
RED A. MARRA
AN SIEGEL
ADFORD P. COLCORD
HN E. MACKENTY
UL M. BROWN
URENCE E. POSNER
EPHEN P. SIDEL
VID G. TAYLOR
HN R. ANTHOLIS

HN B. BERGER, JR.
OF COUNSEL

SEC. AND EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED
MAY 3 1974
CORPORATE REGULATION

99 PARK AVENUE
NEW YORK, N. Y. 10016
(212) 986-5550

ITT TELEX: 423059
CABLE: "OPHLAW"

May 3, 1974

14-19

BY HAND

Securities and Exchange Commission
Regional Office
26 Federal Plaza
New York, New York 10007

Att: Noah Block, Esq.

Re: SEC v. Robert L. Vesco, et al
72 Civ. 5001 (CES)

Gentlemen:

In furtherance to the undertaking in my letter of May 1, 1974, there are delivered herewith two Schedules (A) and (B) which reflect all transactions in securities by Vencap since September, 1972 and through April 30, 1974. You will also find enclosed another Schedule (C) reflecting Vencap's securities position as of April 30, 1974.

With respect to Vencap's Balance Sheet heretofore submitted, we also hand you herewith a schedule containing a breakdown of the "Cash" item on the asset side of the Balance Sheet.

Yours very truly,

James T. Glavin

JTG/ap

EXHIBIT Q

VENCAP LIMITED STOCK TRANSACTIONS

Listed or Traded Securities

DATE	Number of SHARES	Securities	Bought	Sold
[illegible]-Nov. 1972	4,000	HCA Ind.	$ 73,236.35	
[illegible] 1972	400	Concept Inc.	4,000.00	
[illegible] 1972	900	Com.State Corp.	4,750.00	
[illegible] "	900	Com.State Corp.		$ 4,490.00
[illegible] "	400	Concept Inc.		5,642.50
[illegible] "	1,000	Bausch & Lomb	27,429.75	
[illegible] "	1,000	Recrion Corp.	28,561.50	
[illegible] "	2,400	Deltown Foods	47,267.50	
[illegible] "	1,000	Amer.Broadcasting Corp.	76,004.00	
[illegible] "	15,400	Com.State Corp.	77,812.50	
[illegible] "	158,100	Lincoln American Corp.	650,878.44	
Dec. "	1,000	Amer.Broadcasting Corp.		71,956.54
[illegible] "	4,000	HCA Ind.		81,521.03
Dec. "	2,400	Deltown Foods		46,969.73
Dec. "	1,000	Bausch & Lomb.		26,148.47
Dec. "	1,000	Recrion Corp.		26,533.62
Feb. 1973	5,000	Rosário Resources	105,154.50	
Feb. "	25,000	Stilfontein Gold Mining	73,785.52	
Feb. "	5,000	Hartebeest Fontein Gold Mng	64,341.75	
Feb. "	5,000	Lebanon Gold Mine	42,750.--	
Feb. "	5,000	St. Heline Gold Mines	97,500.--	
Feb. "	5,000	Varisystem	27,527.01	
March "	5,000	Rosário Resources		111,610.04
[illegible] - May "	5,000	Hartebeest Fontein		81,002.25
[illegible] - May "	5,000	Lebanon Gold Mine		52,099.24

VENCAP LIMITED STOCK TRANSACTIONS

Listed or Traded Securities

DATE	Number of SHARES	Securities	Bought	Sold
rch - May 1973	5,000	St. Heline Gold Mines		$ 105,250.00
y - June "	25,000	Stilfontein Gold Mining		88,514.61
July "	5,000	Varisystem		9,048.62
une- July "	75,000	Lonrho	$ 139,196.58	
July "	75,000	Lonrho		107,717.68
uly - Oct. "	46,400	Pamour Porcupine Mines	291,219.28	
ug. - Sept. "	3,000	Belco Petroleum	33,809.26	
ug. - Sept. "	15,400	Com. State Corp.		29,971.88
Sept. "	3,000	Belco Petroleum		38,460.83
ct. - Nov. "	46,400	Pamour Porcupine Mines		240,267.46
ct. - Nov. "	7,500	Lincoln American Corp.	21,139.36	
Nov. "	1,000	Holiday Inn	15,628.44	
Jan. 1974	1,000	Holiday Inn		12,609.66
Jan. "	25,000	Jorex	36,427.96	
March "	25,000	Jorex		16,941.8
March "	50,000	Lonrho	94,979.34	
April "	5,000	Universal Oil Products	76,151.58	

VENCAP LIMITED STOCK TRANSACTIONS

B. Nonlisted or Not Traded Securities

DATE	Number of Shares/Amount	Securities	Bought	Sold
Jan. 1973	$662,000	Out-Island Airways -9% Deb.	$ 662,000.--	
Jan. "	6,000	" " "	62,000.-- *	
Aug. "	$662,000	" " " "		$ 662,000.--

* 6,000 shares of Turks & Caicos Airways Limited were subsequently acquired upon surrender of these shares.

VENCAP LIMITED STOCK TRANSACTIONS

C. Securities Inventory

Number of Shares	Securities	Cost
165,600	Lincoln American Corp.	$ 672,017.80
50,000	Lonrho	94,979.34
5,000	Universal Oil Products	76,151.58
6,000	Turks & Caicos Airways Ltd.	62,000.00
		$ 905,148.72

April 30, 1974

VENCAP LIMITED

Cash

Time Deposits at Handelskredit Bank, Zurich	$ 1,305,000
Handelskredit Bank	10,000
Bank of Commerce (New York)	18,011
Bank of Nova Scotia (Bahamas)	9,945
	$ 1,342,956

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- 117A

74 Civ. 2101 (CES)

AFFIDAVIT IN SUPPORT OF SERVICE OF THE ORDER TO SHOW CAUSE

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEON B. KELLNER, being duly sworn, deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., a professional corporation, counsel for plaintiff in this suit.

2. I make this affidavit in support of the request that service of the Order to Show Cause be made on Vencap, Ltd., Intervent, Inc., Intercapital, N.V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe named in the Order to Show Cause by leaving copies of the Order to Show Cause and supporting papers at 99 Park Avenue, New York, New York.

3. The method of service outlined in the Order to Show Cause will provide adequate notice to the parties named in

the Order and is reasonable under the circumstances.

4. The defendant, Richard C. Pistell (herein "Pistell") testified at the Deposition on May 6, 7, 1974 in the suit entitled SEC v. Vesco, et al., 72 Civ. 5001, that Vencap, Ltd., Intervent, N.V., Intercapital, Inc. and Pistell have offices at 99 Park Avenue, New York, New York (p. 6 of Deposition).

5. The defendants, Charles E. Murphy, Jr. and David Taylor, partners in the law firm of Havens, Wandless, Stitt & Tighe, are attorneys-in-fact for Pistell, have offices at 99 Park Avenue, New York, New York and thus is believed that service of the Order to Show Cause and the supporting papers by leaving a copy at their offices, attention Mr. Pistell, would provide adequate notice to Pistell.

6. Additionally, David Taylor is acting as an officer of Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. and service of the papers by leaving copies at his office would provide adequate notice to Vencap, Ltd., Intervent, Inc. and Intercapital, N.V.

7. The law firm of Havens, Wandless, Stitt & Tighe has an office at 99 Park Avenue, New York, New York and is counsel for Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Pistell. Service on the law firm will be adequate notice to Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Pistell plus Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe.

WHEREFORE, deponent respectfully requests that plaintiffs' method of service as set forth in the Order to Show Cause be approved by the Court.

Leon B. Kellner

Sworn to before me this
7th day of June, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IIT, an International Investment Trust, et al.,

Plaintiffs,

-against-

VENCAP, LTD., et al.,

Defendants.

- 119A

74 Civ. 2504 (C.E.S.)

ORDER

- x

An Order having been entered at 5:15 P.M. on June 10, 1974 by this Court, one paragraph of which stated:

"ORDERED, that pending the hearing of this motion Vencap, Ltd., Intervent, Inc., Intercapital, N.V., Richard C. Pistell, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this temporary restraining order are hereby enjoined and restrained from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc., and Intercapital, N.V.,"

Counsel for plaintiffs have moved this Court to modif the above quoted paragraph of the June 10, 1974 Order effective at 10:30 A.M. on June 14, it is hereby:

ORDERED: that effective 10:30 A.M., June 14, 1974 th above quoted paragraph be modified to read as follows:

"ORDERED, that pending the hearing of this motion Vencap, Ltd., Intervent, Inc., Intercapital, N.V., Richard C. Pistell, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having

notice of this temporary restraining order are hereby enjoined and restrained from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc., and Intercapital, N.V."

Dated: New York, New York
June 17, 1974

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

- against -

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- 121A

74 Civ. 2504 (CES)

AFFIDAVIT

- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID G. TAYLOR, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and a member of the firm of Havens, Wandless, Stitt & Tighe. I make this affidavit in opposition to a motion for a preliminary injunction and an appointment of a temporary receiver in the above indexed case.

2. This affidavit is made on facts within my own personal knowledge, except in those instances where the matters averred are stated to be upon information and belief.

3. Upon reading the complaint and affidavit in support of the application made by plaintiff herein for a temporary restraining order, I have concluded that plaintiff's case is predicated on two essential allegations:

(a) That Mr. Pistell, in conspiracy with certain individuals and with intent to defraud the public shareholders of IIT, entered into an agreement to obtain the funds which IIT invested in Vencap Limited ("Vencap") for the personal use and benefit of Mr. Pistell and his friends, and

(b) That as a shareholder of Vencap, IIT is entitled to complain against Mr. Pistell that he has wasted the corporate assets of Vencap.

4. As our memorandum of law in support of our opposition to the plaintiff's motion points out, one of the essential elements involved in the granting of the drastic relief of a preliminary injunction is the determination by the court that it is overwhelmingly likely that the plaintiff will prevail in proving his case upon trial.

5. In that regard, I submit the following:

(a) My involvement with Mr. Pistell and Vencap commenced in or about September 1972 when, as an attorney, I was called upon to assist in negotiations and preparation of an agreement between Vencap and IIT for the investment by IIT of $3,000,000 in Vencap. Annexed hereto as Exhibit A is a copy of such agreement. I participated in the negotiation of this agreement as an

attorney for Vencap together with Messrs. Willkie, Farr & Gallagher as attorneys for IIT and IIT Management Company, S.A..

(b) All negotiations relating to this agreement transpired between the parties in Nassau, Bahamas, and I traveled to Nassau for the purpose of meeting with the attorneys for IIT and IIT Management, S.A. ("IIT Management"). The contract provides in pertinent part that IIT will subscribe to 30,000 participating Redeemable Preference Shares, par value $100 each, of Vencap, and agrees to acquire warrants entitling IIT to acquire an additional 30,000 preference shares at any time during a three-year period commencing from the date of the closing, all for an aggregate purchase price of $3,000,000.

(c) The contract provides that Vencap is a company duly organized and in good standing under the laws of the Commonwealth of the Bahamas, and further provides normal representations and warranties concerning corporate authority of Vencap to enter into and consummate the transaction. Also annexed hereto as Exhibit B is an extract from the minutes of an extraordinary general meeting of Vencap Limited, held on the 31st day of August, 1972, at which time the entry into the agreement was authorized and the provisions with respect to the Shares were designated.

(d) At the time of the entry into this agreement, there were no proceedings pending in any jurisdiction against IIT Management, IIT, Robert C. Vesco or any other person which had any bearing in my judgment on the bona fides of the trans-

action memorialized by the agreement dated September 29, 1972. There is nothing on the face of the documents or in the various minutes annexed thereto which lends support to the notion that the transaction between IIT and Vencap was anything other than an arms-length business transaction.

(e) In plaintiff's moving affidavit it is alleged that a three-page memorandum of the proposed business of Vencap was prepared for the purposes of inducing IIT to invest funds in Vencap. On the other hand, it is suggested that, assuming such a memorandum should be taken for anything more than a proposal to IIT and others, the allegation that it was used for the purpose of inducing an investment seems to conflict with the notion that there was no purpose for the investment other than some sort of a conduit for funds to be put in the hands of Pistell in fraud of the shareholders of IIT.

(f) Further, it is alleged in plaintiff's moving affidavit that IIT sold "blue chip securities" for the purposes of investing in Vencap. At no time was I, or, upon information and belief, Mr. Pistell, aware of what funds and from what sources such funds were being obtained for investment in Vencap, and for the purpose of determining whether or not this transaction was in fact arms-length and is a result of bona fide negotiations, it is totally irrelevant to the issue being litigated here whether or not IIT did or did not sell blue chip securities to raise the funds for these purposes.

(g) The memorandum referred to several times in plaintiff's moving affidavit can, under no circumstances, be construed to be a "private placement memorandum" as that term is understood in United States securities laws parlance. This was not even a transaction in which Vencap was seeking to raise funds from U.S. investors or in the United States. This was in all respects a transaction between a Bahamian corporation and a Luxembourg corporation, neither of which had an office or was engaged in business in the United States. At the time the transaction was made, Pistell had no duty, nor did I, as attorney for Pistell or Vencap, have any duty, to ascertain anything about IIT or IIT Management other than that the individuals purporting to act on behalf of said companies were duly authorized on behalf of IIT to make such transaction and that the transaction would be binding in accordance with its terms.

(h) In dealing with the question of whether or not plaintiff is entitled to prevail on the merits, we should consider the allegations that Vencap has wasted the funds originally invested in it by IIT. In this regard, there is nothing in the original agreement limiting the use of proceeds of the investment, and the three-page proposal deals in very broad generalities concerning the purposes of Vencap. The memorandum speaks for itself and is annexed hereto as Exhibit C, but the following should be pointed out:

(A) It indicates specifically that the Company was formed with a nominal capital and it should be

noted that the September 29, 1972 agreement also specifically recognizes the limited investment of Mr. Pistell and Mr. DeRiencourt in Vencap.

(B) It refers to the personnel to be associated with the company and states that they are an "internationally known investment banker" and an "internationally known investment consultant and manager".

(C) Further, it states that the company is currently negotiating for the acquisition of an equity and debt position with a leading Caribbean air carrier with routes into Miami. It goes on to describe the contemplated investment in this airline carrier.

(D) It further describes the nature of the offering and has a cautionary statement that indicates that the offering is a speculative investment and that such investment is "not for the ordinary investor".

I see nothing in the so-called "private placement memorandum" which could constitute the basis of a claim that Vencap defrauded anybody in the acquisition of the funds at issue or that it committed itself to a "use of proceeds".

(i) With respect to the investment in the unnamed leading international air carrier which plaintiff alleges turned out to be an investment of $600,000 in Out Island Airways Limited, a privately owned Bahamian air carrier, it should be understood that the facts as to whether or not this was a good investment

of Vencap conceivably might be a legitimate subject for trial in an appropriate action in an appropriate forum, but it is not a legitimate subject for moving papers in this action. Vencap did, in fact, make an investment in Out Island Airways, and, for reasons which had nothing to do with the original intention of Vencap management, that investment was repaid subsequently upon the sale of that airline to the Bahamian government, and Vencap made a profit on the transaction.

(j) Vencap has made other investments, to wit, it has purchased from time to time a substantial quantity of New York and American Stock Exchange listed securities which were purchased because the management of Vencap thought they were a good investment at the time, which are indicated on the schedule annexed as Exhibit D. Other significant investments made by Vencap include, through a wholly owned subsidiary, Intervent, Inc., the purchase of oil and gas producing properties in Texas and Louisiana which were purchased in November 1973 for approximately $900,000 and resold five months later with a gross profit of nearly $200,000; and the acquisition of exclusive importation rights for wines produced by the Turkish Wine monopoly. Neither the plaintiff nor I at this juncture can make any statement with regard to the eventual profitability of the wine investment. However, I am advised that funds are needed immediately in order to protect the rights of Vencap and, if such funds are not immediately forthcoming, it is likely that the investment will become valueless.

(k) I have detailed the above for the purposes of showing that Vencap has been actively engaged in seeking to increase the value of its shares with some reasonable modicum of success in an international economic market which has been extremely unfavorable for all investors.

(l) Plaintiff repeatedly alleges that Mr. Pistell has, as an individual, diverted funds to his own personal use and benefit and has been generous with his friends with the funds of Vencap, thus constituting corporate waste.

(m) The complaint in substance deals with the question of whether or not Vencap made an advance to Pistell for the purpose of Pistell paying off a tax lien in the U.S. It has never been argued to the contrary and, in fact, Vencap did make a loan for this purpose. The loan was always, and is now, collateralized and fully secured by 41,741 shares of Flag-Redfern Oil Company, a successor of Pomaikai Oil Company, of Midland, Texas. Flag-Redfern is a well-known private company which has certified financial statements, the latest available one of which is annexed hereto as Exhibit E. It has been Mr. Pistell's belief, and I know of no basis on which to dispute his belief, that the stock of Flag-Redfern which is pledged to Vencap for the purpose of collateralizing the loan has a value in excess of the loan. The loan from Vencap to Mr. Pistell bears interest at the rate of 9.5% per annum, which interest has been paid when due, and the loan matures December 31, 1975. Furthermore, Pistell granted a valuable option on shares of Flag-Redfern, which is annexed as Exhibit F.

(n) A collateralized loan to an officer, director or shareholder is, upon information and belief, entirely lawful under Bahamian law, and there is no undertaking or constituent document of Vencap which prevents Vencap from making such a loan nor any representation of Vencap to IIT or anyone else which would prevent such a loan. On the contrary, a loan or guarantee made to an officer, director or shareholder of Vencap, a Bahamian company, is expressly authorized by Article 3(28) of its Memorandum of Association (See Exhibit G). I submit that it is not in any way indicative of any intention to loot the company of funds which were not otherwise employed for Vencap to make such a loan to Pistell, at reasonable interest secured by sufficient collateral.

6. There are extensive allegations in the affidavit by plaintiff's attorney that Pistell has diverted other funds as well. He presents a listing in which a number of items are repeated under different headings in a manner which suggests that Pistell received over $300,000 in addition to his salary. In fact, that amount was received in accordance with Mr. Pistell's employment agreement, as set forth in Exhibit H.

(a) In December 1973, Pistell borrowed $55,000 from Intervent, Inc. with the consent of Mr. Walter Blackman, who is a 50% stockholder of Vencap (see Exhibit I). The loan is a demand loan, bears interest at the rate of 8% and is collateralized by Mr. Pistell's agreement to grant a mortgage on his personal residence in the Bahamas which is used by Vencap as its office, in the event that the loan is not repaid prior to December 31, 1974 (see Exhibit J). Intervent,

(b) Pistell has received a salary of $60,000 per annum; a fee of $100,000 earned by him was deposited in the Vencap account prior to the investment of $3,000,000 by IIT in order to provide funds for start-up expenses and was thereafter repaid to Pistell; he also received as compensation the cost of his residence in the Bahamas which is Vencap's office (see Exhibit G). In short, the approximately $356,000 alleged to have been received by Pistell directly "in cash" was received by him pursuant to his employment agreement and not in addition to the compensation payable thereunder. The allegation that Mr. Pistell's $60,000 salary is excessive must be judged in light of the income which he was receiving before he left New York and moved to the Bahamas to become the Chief Executive Officer of the Company. Mr. Pistell was paid $50,000 per year in his capacity of Chairman of the Executive Committee of the Lincoln American Corporation. He resigned from that position in October 1972 to devote full time to Vencap's business.

(c) The payment of Mr. Pistell's expenses, which are alleged to be personal expenses, consisting of airplane travel, American Express, limosine service, the Metropolitan Club in New York, the Sleepy Hollow Country Club and the New York Telephone Company, in the aggregate amount of approximately $51,000, was determined by Vencap's

accountants to be for business expenses. Mr. Pistell travels constantly in connection with Vencap's business, and it would hardly seem that such amount of expenses incurred during nearly a two-year period on behalf of the company is unreasonable. In any event, the reasonableness of such expenses is at best a question for a trial in an appropriate action in an appropriate forum and not one which is properly the subject of preliminary injunction in this action.

(d) The other questions relating to the propriety of legal fees paid to Havens, Wandless, Stitt & Tighe, the $25,000 paid to Mr. Blackman pursuant to his employment contract, and the other payments to "friends and acquaintances", some of which were charged as compensation to Mr. Pistell (the loan to Mr. Hill, for example), or the payment to Dr. Malouf (an investment by the company in a Mexican mining venture), are either characterized in a false and misleading fashion or represent an effort on the part of the plaintiff to substitute its business judgment for the business judgment of the company's management. Such questions might be relevant at trial in an appropriate action in an appropriate forum on the question of an alleged waste of corporate assets, but do not justify the granting of the drastic remedies prayed for in this action.

7. I therefore submit that plaintiff has not shown that it will prevail on the trial of this action.

8. The second element required to be shown in an application for preliminary injunction is that plaintiff will be irreparably damaged if the injunction is not granted.

(a) Plaintiff, in support of his contentions, states, among other things, that Pistell's action in borrowing from Vencap to pay his tax lien indicates that he has no other assets to respond in damages and, from this, he tries to make out irreparable damage to plaintiff if the injunction is not granted.

(b) As I pointed out earlier, the subject loan to Pistell is fully collateralized and Pistell has, in fact, paid interest on the loan, which clearly indicates that the unsupported statement on page 4 of plaintiff's affidavit that "it is reasonable to conclude that he will not be able to pay any judgment" is not borne out by the facts. Further, more importantly, the plaintiff has chosen to sue, in addition to Pistell individually, Vencap, Intervent, Inc. and Intercapital, N.V., other individuals including my partner, my law firm and me. There is no allegation nor can there properly be any allegation that none of these individuals, in the event of judgment against the defendants, could respond in damages. It is an essential element for plaintiff to have the relief which it seeks to allege and prove to the satisfaction of the court that it could not obtain satisfaction of a judgment if, in fact, it obtains a money judgment against the defendants. I respectfully submit that this is a fatal flaw in plaintiff's application.

(c) Further to the question of irreparable harm to the plaintiff, it is put to the task of showing that the history of Vencap is such and the evidence as to the future intention of Vencap and its principals are such as to indicate overwhelmingly to the court that Vencap and its principals have been and/or are clearly embarked on a course which will result in the alleged usurpation and diversion of the assets of Vencap. The past history as to Vencap's investments has been testified to over and over again, and in fact the schedule of Vencap's securities transactions was furnished to the SEC as late as May 3, 1974, which schedule is annexed as Exhibit Q to the affidavit of Eugene R. Anderson in support of its motion, and I have given such additional detail and explanation as herein I deem appropriate.

(d) In support of its application for preliminary injunction, plaintiff has stated in Paragraph 30 et seq. of its affidavit on pages 16, 17 and 18 thereof, that "there is a very strong likelihood that the activities of Pistell will continue unabated thereby further dissipating the assets of IIT transferred to Vencap". In support of this allegation, plaintiff cites at length from a deposition of Pistell given to the Securities and Exchange Commission in which, out of context and in a misleading fashion, the investment opportunities which Pistell is looking into for Vencap are described. It is important to look at these statements since they are essential to the plaintiff's case to show irreparable injury.

(e) First, he says "we are looking at opportunities dealing with the growing of various crustaceans in the Caribbean through genetics which looks that it could be a very substantial opportunity for us", and further Mr. Pistell testified that they were looking into situations that could take from anywheres of $100,000 to a million dollars, including a possible venture in Africa. I submit that the court should read this testimony to indicate that Mr. Pistell is a very active, creative businessman who is using his energies to investigate investment opportunities which, in his judgment, have substantial possibilities, and contradicts in every particular the notion that Pistell, on behalf of Vencap, will "divert" or "usurp" funds and not employ them in business ventures which he, in his judgment and the judgment of his management, deems to be appropriate.

(f) There is a further allegation that Vencap transferred $700,000 out of the country, which funds were in the Bank of Commerce and are now in Canada at the Royal Bank of Montreal. This is an attempt to convey to the court a notion which was very prominent in the Securities and Exchange Commission case against Robert C. Vesco, wherein it was alleged that Vesco had taken funds from New York banks and put them in banks in the Bahamas controlled or dominated by Vesco and his associates. There is no attempt to determine whether such transfer had a legitimate business purpose or in any way is in violation of any law. Certainly, the Canadian bank in which the funds had been

ding to the testimony, is a responsible bank
ntrol of Pistell or Vencap, as was alleged to be
Vesco litigation.
e third essential element which the court must
context of the relief prayed for is whether or
of the drastic relief prayed for will create
and do greater damage to the defendants than
in on the part of the plaintiff. In that regard,
fidavit describes the present situation with
efendant companies and his own position. I can
n knowledge, that several ventures in which
stantial interest could very well be destroyed
he granting of the relief prayed for by the
laintiff wants to ensure that Vencap will effec-
yed, it could conceive of no better way to do so
cap from continuing its business in the ordinary
t believe it is appropriate for the court at
e proceedings to make judgments concerning the
s proposed investments, but it is necessary for
sider that Vencap has continuing commitments,
al for the survival of that company. The loss
nvestment could result in a loss to Vencap of
dollars. The loss of a contemplated investment
t venture with the Cameroons Government could
loss exceeding ten million dollars.

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WHEREFORE, yo
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papers be denied in al
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required to post a bon

Sworn to before me this
13th day of June, 1974.

148A

SOUTHERN DISTRICT OF NEW Y

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pect to the bond requirement of plaintiff,
determines to continue the restraints
f prayed for by the plaintiff, the amount
calculated to protect Vencap, its affili-
its shareholders from the immense losses
, should the circumstances produce the
to herein. While it is impossible to
ial losses with any particularity, we
at least $5,000,000 should be posted.
our deponent respectfully prays that the
lief prayed for in the plaintiff's moving
l respects and in the alternative, should
grant such relief, the plaintiff be
d in an amount not less than $5,000,000.

David G. Taylor

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

- against -

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

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137A

74 Civ. 2504 (CES)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CHARLES E. MURPHY, being duly sworn, deposes and says:

(1) I am an attorney admitted to practice in the State of New York and am a member of the bar of this Court and a member of the firm of Havens, Wandless, Stitt & Tighe, 99 Park Avenue, New York, New York 10016. I am also named as a defendant in the within action.

(2) I am submitting this affidavit in opposition to the plaintiff's motion for a preliminary injunction and for the appointment of a temporary receiver of the assets of Vencap Limited et al and the other relief requested by the plaintiff.

(3) I have known Richard C. Pistell for at least ten (10) years and have acted at various times as his personal counsel and counsel for companies with which Mr. Pistell has been associated. 138A

(4) In paragraph 16 of plaintiff's complaint herein it is alleged that, "Vesco, Meissner, LeBlanc and Graze, jointly and severally controlled IOS, IIT management and IIT. IOS controlled IIT and IIT management. Pistell, Blackman, Vesco, Meissner, LeBlanc and Graze, jointly and severally, controlled Vencap, Intervent and Intercapital." As to the statement therein that Pistell, Blackman, Vesco, Meissner, LeBlanc and Graze, jointly and severally, controlled Vencap, Intervent and Intercapital, no facts have ever come to my attention in my capacity as an attorney for Pistell or as an officer and director of Vencap or in any other manner which lends any support whatsoever to the allegation contained in paragraph 16 of the complaint insofar as it attempts to suggest that any or all of Vesco, Meissner, LeBlanc or Graze have an interest in Vencap or the other companies controlled by Vencap and based upon my knowledge of the formation of Vencap, the negotiation of its financing and its subsequent activities, this statement is absolutely and categorically untrue.

(5) In paragraph 24 of the complaint it is alleged that "In or before May 1972, Pistell, Vesco, Meissner, Graze and LeBlanc and others (herein collectively "Conspirators") schemed and conspired to defraud, deceive and deprive IIT and its shareholders of substantial sums of money for the personal bene

capacity as an attorney for Pistell and as an officer and director of Vencap, no facts have ever come to my attention directly or indirectly which have ever suggested to me or led me to conclude that the allegation contained therein has any merit whatsoever. Upon information and belief, based upon my personal knowledge of the arrangements for the funding of Vencap and the circumstances surrounding the operation of Vencap, I can say that the allegation contained in paragraph 24 is absolutely and categorically untrue insofar as it suggests that Pistell entered into a conspiracy with any of the other named individuals and I further assert that no such scheme ever existed or presently exists.

WHEREFOR, your deponent respectively prays that the application for the relief prayed for in the plaintiff's moving papers be denied in all respects.

Charles E. Murphy

Sworn to before me this
15th day of June, 1974.

JOHN K. ANTHONIS
Notary Public, State of New York
No. 31-4507103
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

- against -

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- x

140A

74 Civ. 2504 (CES)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RICHARD C. PISTELL, being duly sworn, deposes and says:

1. I am a defendant in the above entitled action together with other defendants which include Vencap Limited and other companies of which I am a principal shareholder, director and officer.

2. I am submitting this affidavit in opposition to the motion made by plaintiff for a preliminary injunction and for the appointment of a temporary receiver of the subject companies.

3. I am advised by my attorneys that there are serious jurisdictional questions concerning the power of this court to take jurisdiction of the subject companies and of the transactions

complained of, and it is my intention that all rights to raise jurisdictional issues are preserved and are not waived by our appearance for the purposes of contesting the issuance of the relief prayed for by the plaintiff.

4. I have voluntarily and on frequent occasions during 1972, 1973 and this year, given testimony before the Securities and Exchange Commission and before this court concerning my background and experience as an entrepreneur in international financial matters and in the financing, development and operation of companies whose primary purpose is investment in risk capital ventures. It would serve no point for me to repeat what is already on the public record concerning my bockground and experience and my successes and failures in my chosen field, except that I do feel that there is some basis for me to make the statement that my record as a businessman indicates that an investment in a company of which I am the principal would not be considered to be an investment in a "shell corporation" as it is alleged by the plaintiff.

5. I have also repeatedly testified as to the circumstances in which I met Robert C. Vesco and his associates. At the time I met Mr. Vesco I had, in my opinion, the perfect right as a citizen to deal with him in business transactions. I was introduced to Mr. Vesco by individuals who are well known in the financial community. I had no reason to, and had no basis for any suspicion to think that Mr. Vesco and his associates were anything other than businessmen who deserved the respect of the business community. At the time I dealt with Mr. Vesco I was

involving Mr. Vesco and the dollar funds, and as far as I am aware none then existed. In this context I would submit to the court that numerous banks and reputable businessmen in the U.S., including many of the major investment banking and brokerage firms, dealt with the IOS companies. These companies were represented by eminent New York counsel and there is no basis for any assertion that at that time I should have had any reason to believe that they would be the subject of such great notoriety and controversy or that such accusations would be made against them, and through them against me, that they had defrauded millions of people out of hundreds of millions of dollars.

6. I negotiated an agreement at arms-length with Mr. Stanley Graze acting for IIT for an investment in a corporate entity which I proposed to organize in the Commonwealth of the Bahamas. After I had negotiated the essential terms of the referred to investment with Graze, I turned the matter over to my attorneys, Messrs. Havens, Wandless, Stitt & Tighe, to assist me in the preparation of definitive agreements and the organization of one or more companies. They in turn retained counsel in the Bahamas for this purpose and agreements were in fact entered into in the Bahamas and executed in September 1972 following which Vencap was funded.

7. At no time to the best of my recollection, did I have any basis to believe that there was any question concerning the right of Graze or of IIT to enter into such an agreement with me and to in fact consummate the transactions set forth in the agreement.

involving Mr. Vesco and the dollar funds, and as far as I am aware none then existed. In this context I would submit to the court that numerous banks and reputable businessmen in the U.S., including many of the major investment banking and brokerage firms, dealt with the IOS companies. These companies were represented by eminent New York counsel and there is no basis for any assertion that at that time I should have had any reason to believe that they would be the subject of such great notoriety and controversy or that such accusations would be made against them, and through them against me, that they had defrauded millions of people out of hundreds of millions of dollars.

6. I negotiated an agreement at arms-length with Mr. Stanley Graze acting for IIT for an investment in a corporate entity which I proposed to organize in the Commonwealth of the Bahamas. After I had negotiated the essential terms of the referred to investment with Graze, I turned the matter over to my attorneys, Messrs. Havens, Wandless, Stitt & Tighe, to assist me in the preparation of definitive agreements and the organization of one or more companies. They in turn retained counsel in the Bahamas for this purpose and agreements were in fact entered into in the Bahamas and executed in September 1972 following which Vencap was funded.

7. At no time to the best of my recollection, did I have any basis to believe that there was any question concerning the right of Graze or of IIT to enter into such an agreement with me and to in fact consummate the transactions set forth in the agreement.

8. Plaintiff has alleged in paragraph 16 of the complaint that "Vesco, Meissner, LeBlank and Graze, jointly and severally controlled IOS, IIT Management and IIT. IOS controlled IIT and IIT Management. Pistell, Blackman, Vesco, Meissner, LeBlanc and Graze, jointly and severally controlled Vencap, Intervent and Intercapital. (emphasis supplied). The underlined statement to the extent it relates to Messrs. Vesco, Meissner, LeBlanc and Graze is absolutely and categorically denied in every respect. Those individuals, alone or with any other person, have no interest in Vencap direct or indirect, of record or beneficially, as officers, directors, managers, stockholders or otherwise.

9. Plaintiff has further alleged in paragraph 24 of the complaint that "In or before May 1972, Pistell, Vesco, Meissner, Graze and LeBlanc, and others (herein collectively "conspirators") schemed and conspired to defraud, deceive and deprive IIT and its shareholders of substantial sums of money for the personal benefit and use of the conspirators (herein "scheme") ..."

This allegation is absolutely and categorically denied and is untrue in every respect.

I negotiated the Vencap deal with Mr. Graze who was the fund manager in London. I met Mr. Meissner only once in my life on an occasion having nothing to do with the Vencap financing and I never "conspired" or "schemed" with any one or all of these individuals including Vesco.

10. I considered this company to be owned by myself and the other shareholders of Vencap, including IIT, and I proceeded

to act as a businessman in the manner I thought to be appropriate. Any transactions I have had with the company or with others have been fully documented and I have made no attempt whatsoever at any time to withhold information from any legitimate inquiry and have, in my opinion, operated the company in a reasonable fashion.

11. My attorneys have given details concerning the investments made by Vencap and its activities and I will not repeat them here, except to say that I have spent seven days a week in the past number of years with extensive travel and effort to make what I consider to be appropriate investments for Vencap. It is perfectly clear and it has always been perfectly clear that the kinds of investments which Vencap would make would be of a speculative nature and would entail risk. It is my opinion that in a devastating international economic climate I have done reasonably well for Vencap and have made investments which have in hindsight been appropriate for the company.

12. It is alleged that I took an excessive salary from the company and in support of that there is an attempt made to show that fund managers in the U.S. would not have made such a salary. I find this to be totally outrageous as I never purported to be operating Vencap in the same context as an investment advisory firm in the U.S. nor did I advise IIT or anyone else that I was. It is alleged that substantial funds were diverted to my personal use. My attorneys have described the transaction in which I borrowed funds from Vencap for the purpose of paying off a U.S. tax lien and gave to Vencap adequate collateral security to cover such a loan. The other allegations against me

in the complaint deal with my use of the funds of Vencap and are specious in that they alleged that I used the money to be "generous" with various friends and associates. It is my statement that I used the funds for the purposes of furthering Vencap and, if in my judgment I made advances or loans to certain individuals, which I believe would inure to the benefit of Vencap, I think it is an outrage for the plaintiff to suggest that I had no right to do so, or that such advances or loans had no legitimate business purpose.

13. At the present time, substantially all of my business activities are involved in Vencap and its affiliated companies and my personal, business and financial future is 100% at stake on the success of Vencap and its affiliated companies.

14. The granting of a preliminary injunction would cause irreparable damage to Vencap and its affiliated companies and to me and would in fact destroy Vencap and its investments and would have the necessary result of destroying me.

15. In support of the foregoing allegation I submit that Vencap has continuing investment programs which in my opinion are good for Vencap and will be profitable to Vencap. Although I do not pretend to be a soothsayer and neither are the plaintiffs or their attorneys, if there is an injunction, these transactions will be effectively blocked and Vencap will be unable to proceed, will lose whatever rights it has acquired, and will effectively be destroyed as an investment vehicle.

16. I am so intimately associated with Vencap and of course am named directly as a defendant in this complaint to the

effect that the mere publicity surrounding this lawsuit and the applications for restraining orders and receivers and the serving of subpoenas on unrelated third parties who have business relationships with me, have caused such severe apprehension in the minds of bankers, underwriters and the investment community that an affiliated company's position in a substantial investment is already in jeopardy. The financial stability of that company is so intimately involved with my personal and business standing that the granting of a preliminary injunction and appointment of a receiver could effectively destroy it.

Vencap, moreover, is unable to pay for stock of a listed company purchased by Vencap and is now being threatened with publication of this information. Plaintiff is creating what is known as a self-fulfilling prophecy by bringing this outrageous action against me and my companies. If the court allows the proceedings to continue in this fashion, plaintiff will be directly responsible for the losses to Vencap and for the destruction of that company, other companies with which I am associated, and as I stated before but cannot reiterate strongly enough, my own personal and business destruction.

17. My attorneys advised me that one of the requirements for the granting of a preliminary injunction is that the harm done to the plaintiff by not having the injunction will be greater than the harm to the defendant by the granting of the injunction. I believe I and my attorneys have successfully refuted in every particular the notion that I have converted the

funds of Vencap to my own personal benefit. To grant the preliminary injunction would necessarily involve a decision on the part of the court that my conduct in the past with respect to Vencap and any actions which I am proposing to take in the future would be such as would destroy the value of Vencap should there be a judgment rendered in favor of the plaintiff. It is plain to me that the granting of such relief would insure the destruction of Vencap, the preservation of which is the object of printiff's suit, and if in fact plaintiff is unsuccessful in his action the costs to Vencap will be immense, impossible to measure in monetary terms, and permanent.

18. It is for these reasons that I respectfully pray the court to deny plaintiff's application in all respects, to lift all restraints against me, and the other defendants concerned, and to permit me to go about the business of Vencap pending the trial of this action.

Richard C. Pistell

Sworn to before me this
13th day of June, 1974

JOHN E. MacKENTY
Notary Public, State of New York
No. 60-7653800
Qualified in Westchester County
Certified with New York County Clerk Office
Commission Expires March 30, 1976

148A

ENDORSEMENT

Upon hearing the parties and for good cause shown, it is hereby

ORDERED that the Temporary Restraining Order entered herein on June 10, 1974 is hereby extended until July 1, 1974.

SO ORDERED.

United States District Judge

Dated: New York, N.Y.
June 20, 1974.

2ND ENDORSEMENT

The Temporary Restraining Order entered herein on June 10, 1974 is hereby extended until July 5, 1974.

So Ordered

June 27 1974

U.S.D.J.

(56)

SOUTHERN DISTRICT OF NEW YORK

- x

IIT, an International Investment Trust, and Georges Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and LAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- x

149A

74 Civ. 2504

ORDER

It is therefore hereby

ORDERED that defendants Vencap, Ltd., Intervent, Inc., Intercapital, N.V. and Richard C. Pistell, their agents and employees, those acting in concert with them, the agents and employees of those acting in concert with them and those having notice of this preliminary injunction be enjoined from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Ltd., Intervent, Inc. and Intercapital, N.V. until such time as the order may be modified or the within action shall be finally determined; and it is further

ORDERED that the undertaking previously filed by plaintiffs in the amount of $10,000. be increased to $50,000. for the payment of such costs and damages as may be incurred or suffered by Vencap, Intervent, Intercapital or Pistell if it is found that they were enjoined wrongfully; and it is further

New York, New York, be appointed receiver herein to take charge of all present and future assets of IIT, Vencap, Intervent and Intercapital, now in the possession and control of Pistell, Vencap, Intervent and Intercapital or which shall subsequently come into their possession or control until this Order is modified or until a final determination has been rendered in this matter; and it is further

ORDERED that such receiver be directed to take an accounting of past expenditures of Pistell, Vencap, Intervent and Intercapital, and recoup for the benefit of plaintiffs herein any assets of Vencap, Intervent or Intercapital which have previously been wrongfully or improperly dispersed; and it is further

ORDERED that the parties come before this Court within ten days of the date of this Order with any proposed modifications of this Order; and it is further

ORDERED that such receiver be required to take an oath swearing to faithfully perform his duties in such manner and form as is required by the Rules of this Court;

ORDERED that such receiver shall file an undertaking in the amount of $25,000 in the form required by the Rules of this Court by July 10, 1974 at 4:00 o'clock in the afternoon of that day for the payment of such costs and damages as may be incurred by any of the appearing parties herein as a result of said receiver's misfeasance of his duties.

SO ORDERED.

United States District Judge

Dated: New York, N. Y.
July 3, 1974.

151A

ANDERSON RUSSELL KILL & OLICK, P. C.
ROCKEFELLER CENTER
600 FIFTH AVENUE
NEW YORK, N. Y. 10020

AREA CODE 212
541-8100

CABLE ADDRESS
"NEWERALAW NEWYORK"

EUGENE R. ANDERSON
NICHOLAS L. COCH
RICHARD W. COLLINS
JOHN H. DOYLE, III
DONALD A. HERNER
LEON B. KELLNER
LAWRENCE KILL
ARTHUR S. OLICK
JEROLD OSHINSKY
DAVID P. PRESCOTT
JOHN C. RUSSELL
ARNOLD J. SCHAAB

STUART A. WHITE
COUNSEL

July 2, 1974

The Honorable Charles E. Stewart
Room 2602
United States Courthouse
Foley Square
New York, New York 10007

Re: IIT, et al. v. Vencap, et al.
74 Civ. 2504 (CES)

Dear Judge Stewart:

This letter relates to the question of United States fundholders for IIT.

Immediately after the colloquy with respect to Exhibits 6 and 7 and the U.S. fundholders I contacted our clients to obtain an affidavit.

Our clients are in Luxembourg and, as I believe you know, the basic records are in Ferney-Voltaire, France so that there is a communications problem because of the three way geographic separation. Secondly, there is always a time lag because Luxembourg and France are winding up their business day at about the time we are starting. Responses are not as immediate as we would hope. Since the air fare to Europe is now quite expensive, I did not feel that I could justify sending a member of our firm to Ferney-Voltaire to attempt to shorten the time.

Within the next day or so I expect to have an affidavit from Ferney-Voltaire stating that as of December 31, 1973 IIT had fundholders approximately as follows:

U.S. citizens who are residents of the United States	65
U.S. citizens who are non-residents of the United States	110
Non-U.S. citizens who are residents of the United States	160

These totals will confirm the information shown on the computer printouts, Exhibits 6 and 7.

As soon as the affidavit is prepared we will have a copy telexed to our office and will submit the telex to you.

I respectfully submit to Your Honor that Exhibits 6 and 7 are sufficient to establish the probability that at the hearing on permanent injunction the plaintiffs will succeed in proving the facts stated above and shown on Exhibits 6 and 7.

The fund holdings stated above, I submit, show a significant impact on the United States securities market. In the Ralston Purina case (346 U.S. 119 (1953)) there were relatively few stockholders involved. In connection with the private offering exemption under Section 4(2) of the 1933 Act, the guideline has traditionally been a "handful" of sophisticated investors. See Securities Act of 1933 Release No. 5487 dated April 23, 1974. New SEC Rule 146 provides a limit of 35 purchasers for exemption as a private offering.

In addition to the U.S. fundholders there are at least two other factual bases upon which you can reach a conclusion that the transactions of which the plaintiffs complain had a significant impact on the domestic securities market. The first is the sale of the "blue chip" securities at ANBT by IIT. The second is the fact that Vencap was 80% invested in marketable United States securities shortly after it received the $3,000,000 from our

clients. Mr. Pistell so testified before Your Honor in April 1973. See Exhibit 12 at p. 2320. See also Exhibits 30 and 33.

I regret that the affidavit has not arrived from Ferney-Voltaire and am doing everything within my power to obtain it forthwith.

Very truly yours,

Eugene R. Anderson

cc: John C. Oram, Jr., Esq.

150

SOUTHERN DISTRICT OF NEW YORK

IIT, et al, Plaintiffs	:	**154A**
against	:	74 Civ. 2504 (CES)
Vencap, et al, Defendants	:	AFFIDAVIT OF PETER G. WOOD

PETER G. WOOD, being duly sworn deposes and says:

1. I am Manager of the Client Service Department of Services Administratifs IOS France, S.A., a subsidiary of Transglobal Financial Services Limited, which provides administrative services to I.O.S., Ltd. I am a citizen of the United Kingdom and I reside in Ferney-Voltaire, France, where I have been a resident since January 1966, when I was first employed by IOS.

2. From January 1966 through the present I have been responsible for the maintenance of the records of the Fundholders of IIT, an International Investment Trust (herein "IIT"), as well as the records of the Fundholders of the various other Funds.

3. As of December 31, 1972, there were approximately 150,000 Fundholders in IIT and among them are the following:

   A. United States Citizens residing outside the United States - 111
   B. United States Citizens residing in the United States - 67
   C. United States Residents who are not citizens thereof - 159
   D. Total United States Citizens - 178
   E. Total United States Residents - 226

.../..

155A

4. The number of Fundholders in IIT enumerated above has remained constant from November 28, 1972 through the present. There may, however, have been minor changes in the number of United States Citizens and Residents due to changes in citizenship and residence of Fundholders.

5. The numbers referred to in paragraph 3 are derived from a Client Master File maintained on computer tape. This tape was made and kept in the ordinary course of business and deponent provided the fundholder information that was stored on the tape including but not limited to the citizenship and residency of the Fundholders. Accordingly, deponent is familiar with the contents of the tape and the matters set forth herein.

PETER G. WOOD

Sworn to before me
this 23rd day of July, 1974

ROBERT ACHARD
NOTAIRE à GENEVE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IIT, et al.,

Plaintiffs,

-against-

VENCAP, LTD., et al.,

Defendants.

- x

156A

74 Civ. 2504 (C.E.S.)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EUGENE R. ANDERSON, being duly sworn, deposes and says:

1. I am a member of the firm of Anderson Russell Kill & Olick, P.C., counsel to the plaintiffs. I make this affidavit in partial opposition to the proposed modifications of the preliminary injunction which have been suggested by the Receiver, Arnold I. Burns.

DEFENDANTS ARE APPARENTLY
NOT INTERESTED IN MODIFYING
THE PRELIMINARY INJUNCTION

2. Almost immediately after the Court suggested that the parties get together with respect to a modification of the preliminary injunction, I wrote to counsel for the defendants suggesting that he call us with his suggestions. A copy of my letter is enclosed as Exhibit A. We have never received any response to our overture. Based on this apparent lack of interest on the defendants' part, plaintiffs respectfully request that there be no modification of the preliminary injunction.

DEFENDANTS HAVE FAILED AND NEGLECTED TO SUBSTANTIATE EXPENDITURES HERETOFORE MADE WITH THIS COURT'S PERMISSION AND THEREFORE SHOULD NOT BE PERMITTED TO MAKE FURTHER EXPENDITURES

3. As a result of an application by the defendants, the temporary restraining order was modified to permit the defendants to make four payments aggregating $33,998.19. This was done on the express understanding both on and off the record that these four expenditures would be substantiated. Mr. Oram stated:

> "That, your Honor, is an amount in the aggregate of $33,998.19. We understand that on Monday morning we would supply your Honor with confirmation with respect to the purchase of the stock and any other bills which aggregate the amounts that we talked about here." (Transcript, p. 94.)

4. It has been over a month since that commitment was made and if any bills or other substantiation was submitted to the Court, no copy was received by counsel for the plaintiffs. This casual approach to money and commitments to the Court evidences a lack of interest on the part of the defendants in obtaining further funds.

PISTELL SHOULD NOT RECEIVE FURTHER COMPENSATION FOR "SERVICES" RENDERED TO VENCAP

5. As this Court found:

> "From the founding of Vencap through April 30, 1974, Vencap, Intervent and Intercapital have dispersed to or for Pistell as salary, advances, loans and expenses $1,456,461.57 (loans of $645,000, compensation of $356,640.62 and expenses of $454,820.95)." (July 3, 1974 Opinion and Order, pp. 14-15.)

Plaintiffs submit that Mr. Pistell has been more than amply compensated by Vencap for his purported services. In this regard it is worth noting that Mr. Pistell has testified that "his

'main interest' was Chibex". (July 3, 1974 Order and Opinion, p. 16.)

6. A further, and plaintiffs submit, dispositive reason for refusing any further compensation to Pistell is that he is the beneficial owner of at least 50% of the ordinary stock of Vencap and, as such, stands personally to gain the most from any profits made by Vencap. As the principal beneficiary of any Vencap gains, Mr. Pistell should be willing and even anxious to devote some small part of his time away from his main interest, Chibex.

7. Mr. Pistell testified in SEC v. Vesco as follows:

> "Q And could you give us an estimate of what your family net worth is today?
>
> A My family net worth is in excess, I guess, of several millions of dollars.
>
> Q Is that all as a result of your efforts as a financier and venture capitalist?
>
> A I would say most of it, yes." (Exhibit 12 at pp. 2466-2467.)

Plaintiffs submit that it borders on the ridiculous to suggest that an individual of Mr. Pistell's alleged wealth, with his substantial equity interest in Vencap, would even ask to be further compensated for services.

NO FURTHER FEES SHOULD BE PAID TO HAVENS, WANDLESS, STITT & TIGHE AT THIS TIME

8. The evidence at the hearing on preliminary injunction shows that in the brief corporate history of Vencap, it has paid Havens, Wandless, Stitt & Tighe $263,784.03 (Exhibits 14-35, 31 and 32). In view of the fact that, as Mr. Pistell testified, the $3,000,000 fund was mostly invested in marketable securities,

legal fees and expenses of this magnitude seem somewhat high. Under all the circumstances, plaintiffs respectfully suggest that Messrs. Havens, Wandless, Stitt & Tighe wait for any further remuneration until a resolution of this litigation.

CONCLUSION

9. The modifications suggested by the Receiver are acceptable to plaintiffs with the exception of the portions permitting payments to Mr. Pistell or Havens, Wandless, Stitt & Tighe.

Eugene R. Anderson

Sworn to before me this
30th day of July, 1974.

Notary Public
LEON B. KELLNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4536767
Qualified in New York County
Term Expires March 30, 1975

160A

July 8, 1974

John C. Oram, Jr., Esq.
Havens, Wandless, Stitt & Tighe
99 Park Avenue
New York, New York 10016

Re: IIT - Vencap

C O N F I D E N T I A L

Dear John:

This letter is in reference to Judge Stewart's suggestion for a modification of the permanent injunction. We will want to consult with the receiver in this regard and I suggest that you call my partner, Neal Morse, with your suggestions and let him coordinate with the receiver.

Very truly yours,

Eugene R. Anderson

cc: Arnold I. Burns, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

IIT, an International Investment Trust and George Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

- -x

161A

74 Civ. 2504

SUPPLEMENTAL ORDER

WHEREAS, an Order (the "Order"), was entered herein on July 3, 1974 (a) enjoining defendants Vencap, Ltd. ("Vencap"), Intervent, Inc. ("Intervent"), Intercapital, N.V. ("Intercapital") and Richard C. Pistell ("Pistell") from expending, dissipating, reducing, encumbering, investing, transferring and exercising any control over the present and future assets of IIT, Vencap, Intervent and Intercapital; (b) appointing Arnold I. Burns as Receiver of all present and future assets of IIT, Vencap, Intervent and Intercapital in the possession of the above-named defendants, and (c) directing the Receiver to take an accounting of past expenditures of the above-named defendants and to recoup for plaintiffs any assets improperly disbursed; and

WHEREAS, application has been made to this Court to modify the Order, and a hearing having been held in connection therewith on the 31st day of July, 1974 at which time attorneys for plaintiffs, defendants and the Receiver advised the Court as to suggested modifications of the Order; it is hereby

ORDERED that defendants Pistell, Vencap, Intervent and Intercapital deliver to Arnold I. Burns, Receiver, a current statement of the assets of Vencap, Intervent and Intercapital and the latest financial statements respecting said corporations, no later than the close of business on the 15th day of August, 1974; and it is further

ORDERED that defendants Pistell, Vencap, Intervent and Intercapital turn over to the said Receiver all of the assets and property of Vencap, Intervent and Intercapital in their possession or under their control, including, without limitation, any and all cash, certificates of deposit, securities, evidences of indebtedness and books and records of said corporations no later than the close of business on the 15th day of August, 1974; and it is further

ORDERED that defendants Pistell, Vencap, Intervent and Intercapital are directed to provide the Receiver in writing with a detailed statement and explanation respecting current projects of the above-named corporations, including, without limitation, proposed investments in Sangin, a corporation attempting to import Turkish wine, and in a mining concession in the Camaroons; and it is further

ORDERED that the Receiver, upon receiving such reports and consulting with such experts as he feels necessary and proper, evaluate the proposed investments and report to this Court his recommendations with respect thereto; and it is further

ORDERED that the Receiver be authorized to compensate Pistell for the reasonable value of any services rendered, and for the expenses incurred, by Pistell in negotiating and evolving investments for Vencap, Intervent and Intercapital and in reporting on such projects to the Receiver provided the Receiver is apprised in advance of and approves such contemplated expenditures prior

to their incurrence. Any applications for payment to Pistell for compensation or expenses shall be submitted by the Receiver to this Court for its approval; and it is further

ORDERED that any and all claims by Pistell for past services rendered to or expenses incurred on behalf of Vencap, Intervent or Intercapital and any and all claims for fees for legal services and accounting services heretofore rendered to Vencap, Intervent or Intercapital by the firm of Havens, Wandless, Stitt & Tighe and the firm of Field, Tiger, Krell & Werber, be submitted in writing to the Receiver for his consideration and recommendations, but the same shall not be paid without the approval of this Court; and it is further

ORDERED that any and all claims for future services rendered to or expenses incurred on behalf of Vencap, Intervent or Intercapital be submitted in writing to the Receiver for his consideration and recommendation, but the same shall not be paid without the approval of this Court; and it is further

ORDERED that the Receiver be authorized, subject to application and prior approval of this Court, to retain independent auditors to aid him in fulfilling his duties herein; and it is further

ORDERED that in all other respects the Order be and the same hereby is continued in effect.

SO ORDERED

_____

U. S. D. J.

Dated: New York, New York
August 2, 1974

rkesb

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IIT, an International Investment Trust, et al,

Plaintiffs,

vs.

Vencap, Ltd., et al,

Defendants.

- x

165A

74 Civ. 2504

Before:

HON. CHARLES E. STEWART,

District Judge.

June 10, 1974
5:00 p.m.

APPEARANCES:

Anderson, Russell, Hill & Olick, Esqs.
Attorneys for Plaintiffs
By: EUGENE R. ANDERSON, ESQ.
LEON KELLNER, ESQ.

Havens, Wandless, Stitt & Tigue, Esqs.
Attorneys for Defendants
By: DAVID TAYLOR, ESQ.

(Case called.)

THE COURT: Yes, gentlemen.

MR. ANDERSON: May it please the Court, this is an application for an order to show cause with temporary restraining order in connection with a complaint alleging that Richard C. Pistell and others obtained $3 million from IIT which was one of the IOS Funds in the mid part of 1972.

The allegations of the complaint that the obtaining of those funds and subsequent disposition of the funds violated the securities laws of the United States, among others.

The affidavit in support of the order to show cause and temporary restraining order contains facts which were largely taken from the deposition testimony of Mr. Pistell in the so-called Vesco case and testimony at the hearing before your Honor in that case as well as exhibits presented in connection with both his testimony at the hearing and his deposition testimony.

These documents show that after Mr. Pistell's shell corporation, Vencap, obtained $3 million of IIT's funds, that in excess of $1 million of those funds have been spent on items directly related to Mr. Pistell's personal life or personal expenditures.

THE COURT: Mr. Anderson, is this an additional

million or is it part of the $3 million?

MR. ANDERSON: One million out of the three million, your Honor, has been spent. A portion of that $1 million was some $590,000 which was used by Mr. Pistell to pay his United States Government and New York State income taxes.

The other expenditures comprising that million are largely outlined in paragraph 10 of the moving affidavit, but they come up to what I would consider to be some very large amounts of money on expenditures.

Now, Vencap, if it ever was a legitimate operation, was sold to IIT on the basis of being, in effect, an investment company. I don't believe that there is any way that we can see that an investment company in a two-year period of time could reasonably have spended over $1 million on expenses whether those expenses were related to Mr. Pistell personally or not, and I think it is just so clear, it is almost beyond argument that the $590,000 went to pay his personal expenses.

Vencap, your Honor, has an office here in New York City at the Havens law firm. One of the partners of the Havens, Wandless firm is a former officer of Vencap. I believe that one of the present partners of the firm, Mr. Taylor who is here today, is an officer of Vencap.

Mr. Pistell testified a few weeks ago that he had moved $700,000, and this is not included in the million, he had moved $700,000 out of a bank in New York City to a bank in Canada, and he further testified on his recent deposition that Vencap was contemplating further and substantial expenditures.

THE COURT: I think, Mr. Anderson, I am familiar with your papers and I understand your application. Perhaps I can hear from Mr. Taylor.

MR. TAYLOR: Yes, your Honor. Unfortunately, I have had to leave a meeting and I have not had the benefit of reading these papers before this motion.

Mr. James Gavin, my partner, was called a few hours ago and was told it was important that someone appear at this meeting. It is a little difficult to respond with such short notice.

THE COURT: The only thing before me at the moment, I take it, is whether or not I should enter an order setting this down for a hearing on the motion for a preliminary injunction and in connection with that, grant a temporary restraining order.

I had not supposed that you would be ready at this point to present your side of this problem.

MR. TAYLOR: I can't say that we are. The

difficulty is that, unfortunately, I just received from Mr. Anderson --

THE COURT: What I suggest we do, then, is this: On the basis of what I have in front of me, I am disposed to enter the order and the temporary restraining order.

I understand fully that you have not had an opportunity to consider this and I, of course, will be available to hear any application that you may want to make in the course of the next day or two with respect to the temporary restraining order.

MR. TAYLOR: I would like to oppose that order, your Honor.

THE COURT: I assume you will.

MR. TAYLOR: May I present what I think are the relevant arguments?

THE COURT: Yes.

MR. TAYLOR: Number one, I think it is important, as you recall, that Mr. Pistell nor Vencap nor Intercapital,nor any of the named defendants are not parties to the SEC action and Mr. Pistell gave testimony voluntarily, further testimony recently in connection with the SEC case, and he did so upon our advice,that he should in all respects cooperate with the Securities and Exchange Commission and, in particular, that he had nothing to fear

because he was not in fact a part of the so-called Vesco group.

I know by just a very cursory reflection of these documents that there is now what is referred to as a Pistell group and I believe that it is fair to say that the Pistell group is identified in this item No. 24, which more specifically refers to the scheme and I find this very unfair, your Honor --

THE COURT: Item 24?

MR. TAYLOR: In plaintiffs' complaint for a jury trial. I find this unfair because it refers to, collectively, conspirators, Pistell, Vesco, et cetera, and among other things --

THE COURT: I am trying to find Item 24.

MR. TAYLOR: Page 5 of the plaintiffs' complaint and demand for a jury trial.

THE COURT: I have it. Go ahead.

MR. TAYLOR: I believe that the first item, I think, indicates to you the sort of an assumptive leap that has been made by Mr. Anderson.

It says, "The conspirators, namely, Pistell, Vesco, Meissner, Graze and LeBlanc conspired to do, among other things, sell all of ITT's readily marketable securities."

I would point out to your Honor that IIT had assets amounting to, if not $1 million, a very substantial amount, and it is somewhat presumptuous for the plaintiffs in this action to even allege that Pistell conspired with these other individuals, particularly in light of the fact that the SEC after Pistell's full deposition before trial, before the commencement of an action, did not deem it worthy of the SEC to bring an action against Pistell or these companies; that they should claim that Pistell conspired with these gentlemen to liquidate and sell all of ITT's marketable securities.

I think this indicates to your Honor that what we have here are allegations which are unrealistic, unrelated to either what the SEC has done or what the evidence will relate, and I point out respectively that the transcript, the full transcript of the prior deposition of Mr. Pistell before the SEC commenced this action and at the trial in which Mr. Pistell was called as a witness by the SEC, indicated that he dealt at arm's length with these defendants, and with all due respect to Mr. Anderson, I take umbrage, I take personal umbrage at being identified, myself personally and my firm, as defendants with Mr. -- or my partner, Mr. Murphy with either Mr. Meissner, Mr. Vesco in this action because we have always dealt at arm's length

with these individuals and we have no association with them.

So, there is a very monumental assumption here and it is referred to here as, I say -- I can only identify this complaint as guilty by association, by which I mean that any individual or person or company that dealt with Mr. Vesco or Mr. Meissner before, they were in any sense, in any respect criticized or their conduct was complained of, to identify anyone whoever had any dealings with these individuals as somehow being guilty by reason of that dealing.

I would point out to your Honor that the transactions relating to Intercapital, Ltd., and Vencap, Ltd., and particularly Vencap, Ltd, because that is what is complained about in this complaint,were negotiated at arm's length in which there were opinions of counsel in which Wilkie, Farr represented the funds and these were all closed before the SEC, even before Mr. Pistell was asked to give a deposition by the SEC and was over before the SEC filed a complaint.

So, I find that the concept that there should be a preliminary injunction, your Honor, is inconsistent with what I would ca-l due process and the fairness that the parties are entitled to, particularly since there -- as far as I am aware, there is now no allegation by the SEC or any

other party that in fact Mr. Pistell was a member of the Vesco group.

THE COURT: No, but I take it what Mr. Anderson is raising in his papers is something new.

You will have full opportunity, Mr. Taylor, to present to me your views as to whether or not there ought to be a preliminary injunction.

On my quick review of these papers, I must say I think that at least as far as your firm is concerned, and you personally and Mr. Murphy personally, I have a large question as to whether your firm and you and your partner have acted in any way which is subject to criticism, but I just don't know.

What I would propose to do, therefore, is to grant this order to show cause and make it returnable in the very near future.

I take it, Mr. Anderson, you still want me to enter the TRO with respect to Mr. Taylor, Mr. Murphy and his firm and I will accept the representation by Mr. Taylor that no member of that firm will transfer any Vencap assets or assist in the transfer of any Vencap assets.

MR. ANDERSON: It is really Mr. Pistell who calls the shots here, we believe.

THE COURT: How do you want to deal with that, Mr.

Taylor?

MR. TAYLOR: I would submit, your Honor, in light of the fact that the SEC after full examination of Mr. Pistell did not deem it appropriate to bring an action --

THE COURT: I am going to enter a TRO against Mr. Pistell. My question is --

MR. TAYLOR: With all due respect, I question whether a TRO is appropriate and would say since these companies and Mr. Pistell were acting at arm's length, not only is a TRO not appropriate, but I would think if there is to be a restraint, if there is to be any restraint of normal business conducted by these companies, which, after all, is in the best interest of Mr. Anderson acting for IIT, then it is appropriate that there be some kind of bond posted.

THE COURT: I will get to the question of a bond.

I take it, you don't wish to accept Mr. Anderson's suggestion that the TRO be modified to leave you and your firm out of it?

MR. TAYLOR: I think we should be left out of it, your Honor, but I don't really believe that a TRO is appropriate.

THE COURT: I think we have been over that. I think we will leave the TRO the way it stands.

What about a bond, Mr. Anderson, what amount do

you think is proper?

MR. ANDERSON: The total investment of Mr. Pistell and his colleague, Mr. Blackman, who are the only two people who could possibly have any financial interest in this other than ITT and its shareholders, is variously described as $2,000 or $4,000.

The fact that he has been drawing at the very least a salary of $60,000 a year, I would think indicates that he really has no interest. I would suggest, your Honor, a bond not in excess of $4,000.

THE COURT: What do you think about that, Mr. Taylor?

MR. TAYLOR: I can state with my knowledge of the activities of the corporation, number one, that there is no risk or danger that the corporation will dissipate funds.

The only contemplated investment is one referred to by Mr. Anderson which Mr. Pistell testified freely about. That investment is one in which the company may or may not make the investment, but if the company does not make the investment, it will be, I say, I would advise the client, that it would be disadvantageous to the client because they would not be supporting a prior investment which they made to which Mr. Pistell fully testified.

I would say to the extent of a TRO --

THE COURT: We are talking now about a week or ten days at the most.

MR. TAYLOR: If we could really resolve this in a week or ten days, I don't think there would be any problem, but I do think because there is almost no prima facie showing by the plaintiff in this case, that a very substantial bond is indicated and I think it is particularly apropos because I, without having had the benefit of reading these claims -- my interpretation is that the company must stand still and no amounts disbursed or expended until that hearing is held.

THE COURT: You confuse me. First you said you didn't think there would be anything serious and, further, that the company was not about to disburse or dissipate money and in the next breath, you say you want a very substantial bond.

What do you mean by a substantial bond?

MR. TAYLOR: I think under the circumstances, your Honor, a bond in the amount of $300,000 is indicated.

THE COURT: How do you arrive at that figure?

MR. TAYLOR: I would arrive at that figure --

THE COURT: Is that the kind of loss that the defendants here may suffer in the course of the next couple of weeks as a result of this TRO?

MR. TAYLOR: If there is a delay in the proceeding, a week or ten days would not, I don't believe, constitute such a delay, but if there was a delay of perhaps more than two weeks, in my opinion, Vencap, who is one of the defendants in this company, could suffer a loss on the valuable right which it has and to which there is full testimony before the SEC of an amount that could exceed that.

THE COURT: Thank you.

I had in mind, as I have just indicated, setting this down for a hearing on the application for a preliminary injunction as early as possible.

What about the end of this week or sometime early next week?

MR. TAYLOR: The end of this week would be fine.

THE COURT: How about early next week?

MR. ANDERSON: Yes, your Honor.

THE COURT: I want to take a minute or two to look at my calendar. Can you give me a short moment.

(Pause)

THE COURT: Gentlemen, would 10:30 on Friday be too soon for your?

MR. ANDERSON: That is fine.

MR. TAYLOR: That is all right.

THE COURT: I will impose a bond of $10,000.

I can enter this order right now. Do you want Mr. Anderson to file this?

MR. ANDERSON: If you will complete it and we will then take it, conform it and file it.

THE COURT: Can we do this on one day or should we count on going into Monday?

MR. ANDERSON: I feel this will be a short hearing. Our evidence will consist of the transcript of the deposition of the trial and the various exhibits and I will approach counsel for the defendants prior to that to see if we can't stipulate to have that all authenticated so we don't have to get a reporter here to read it.

MR. TAYLOR: I think, your Honor, we would like to have a day if required to respond. We have had no notice of this. I have had no opportunity to review these documents so I don't really know what the scope is or what response is required.

THE COURT: What day do you want, Wednesday, Thursday?

MR. TAYLOR: Wednesday or Thursday would be fine.

THE COURT: You tell me.

MR. TAYLOR: Wednesday preferably.

THE COURT: All right. By Wednesday -- what part of the day?

MR. TAYLOR: I would hope we could start in the morning --

THE COURT: I thought you meant to file papers.

MR. TAYLOR: Yes. If we want to respond, I think we will want to respond formally.

THE COURT: Respond to what?

MR. TAYLOR: To these documents, file briefs, et cetera. I think we need to have some opportunity to reply.

THE COURT: I don't have any hearing between now and Friday. I was thinking that you wanted a day certain on which you would file papers in response to the application for a motion for a preliminary injunction, not to the order to show cause which is now done.

MR. TAYLOR: All right, your Honor. The order to show cause, you will set down for Friday of this week. That is acceptable to us.

THE COURT: That is on the motion for a preliminary injunction and you could file papers with me as to your position as to whether or not the motion for a preliminary injunction should be granted, and you are suggesting Wednesday?

MR. TAYLOR: I would prefer to have a week after the hearing, if that is possible.

THE COURT: All right, you can have time after the hearing. If you want to file anything prior to the hearing --

MR. TAYLOR: We will attempt to do so, but we have had literally no notice on this.

THE COURT: If you want to file something before the hearing, I will accept your papers up until the time of the hearing but if you have something important to say to me that you want to put in writing before the hearing, I think you should get it to me as soon as you can.

I guess, Mr. Anderson, I will put down that you will file the bond before four o'clock tomorrow.

MR. ANDERSON: Fine, your Honor.

THE COURT: And you will make service prior to the same time.

MR. ANDERSON: Fine, your Honor.

THE COURT: You will provide the service by mail?

MR. ANDERSON: With respect to the people who do not have addresses in New York City, in many instances, we have both leaving a copy in New York and by mail.

THE COURT: Do you want to take this and conform it, please.

As I understand, we will meet again on Friday at 10:30, at which time I will receive whatever evidence is

presented to me on the application for a preliminary injunction and if either of you want to file papers, either supplemental or additional or new papers before then, I will, of course, receive them.

I would suppose, Mr. Taylor, in view of the shortness of time here, that at the hearing or after the hearing, if you want to have some time in which to file further papers, I would be disposed to grant you that time.

MR. TAYLOR: I would appreciate that, your Honor.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IIT, an International Investment Trust, and George Baden, Jacques Delvaux and Ernest Lecuit, as Liquidators for ITT, an International Investment Trust, Plaintiffs,	:	
vs.	:	74 Civ. 2504
Vencap, Ltd. Intervent, Inc., Intercapital, N.V., Richard D. Pistell, Walter Blackman, Robert L. Vesco, Milton F. Meissner, Norman Leblanc, Stanley Graze, Charles E. Murphy, Jr., David Taylor and Havens, Wandless, Stitt & Tighe, Defendants.	:	

New York, New York.
June 14, 1974 - 9:50 A.M.

Before:
HONORABLE CHARLES E. STEWART, JR., District Judge.

APPEARANCES:

ANDERSON, RUSSELL, KILL & OLICK, P.C.
600 Fifth Avenue
New York, New York.
By: EUGENE R. ANDERSON, ESQ.,
NEAL J. MORSE, ESQ., of Counsel.
Attorneys for plaintiffs.

HAVENS, WANDLESS, STITT & TIGHE, ESQS.,
Attorneys for defendants
99 ParkAvenue
New York, New York. 10016
By: JOHN C. ORAM, JR., ESQ.,
PAUL M. BROWN, ESQ., of Counsel.

MR. ANDERSON: Your Honor, Mr.E. Lanoff, who was counsel at the SEC against Vesco hearings for Stanley Graze, asked me -- and, who was served pursuant to the order to show cause -- asked me to represent to the Court that he no longer represents Mr. Graze, and I accept his representation and pass that on to the Court.

Your Honor, we have a stipulation for you, which has been signed by our firm as counsel for the plaintiffs, and by -he Havens, Wandless firm as counsel for certain of the defendants, Vencap, Intervent, Intercapital, Mr. Pistell, Mr.Murphy, Mr.Taylor and the Havens, Wandless firm, and it relates, I would say, primarily to the use of the transcripts of Mr. Pistell's testimony at the trial and on deposition in the SEC against Vesco case.

And one portion of that I think is subject to the schedule that we worked out. The defendants had not corrected the record in either the preliminary hearing or on the transcript of the deposition, and this stipulation provides that they would have until noon next Monday to make corrections.

That is obviously acceptable as far as the plaintiffs here are concerned. I would like to, at this time, on the plaintiffs' motion, eliminate Mr.Taylor,

Mr. Murphy and the Havens, Wandless firm from the temporary restraining order at this time, and as of this time.

I think that it has served its purpose as far as stopping what we sought to be expenditures of fund and I accept the proposition and I really do this on my own motion, without having been asked, that the lawyers will act appropriately under the circumstances.

THE COURT: You will recall we talked about this at our last session --

MR. ORAM: Your Honor, I am John Oram of the firm of Havens, Wandless, Stitt & Tighe. I would like to make a few preliminary observations as to the part Mr. Anderson just raised. We have some difficulty, having been named as defendants in this action. We have it on two levels. Practical and philosophical. The practical aspects, Mr. Taylor and Mr. Murphy, my partners, who know the most about this proceeding having been named as defendants and who will probably have to be called as witnesses are excluded from handling the defendants' defense to this petition for preliminary injunction.

My involvement with the affairs of Mr. Pistell, Vencap and his related companies is about 48 hours old. My partner, Mr. Brown, next to me, his involvement, I believe, is somewhat less. As the result, I would ask your

indulgence, your Honor, that Mr.Brown and I may share the presentation of the defendants case. We will do it in as orderly a manner as possible, but because of the short time we have had to prepare, I will ask both of us be allowed to participate.

Secondly, on the philosophical plane, I must say, your Honor, that we are frankly outraged to have been named a defendant in this case, particularly when affidavits submitted on information and belief contained not one shred or suggestion of any evidence that this firm acted as lawyers in their professional capacity.

We think that this is a new ploy in suits of this kind, to name the lawyers as co-conspirators, thereby eliminating from the defense that counsel that knows the most of the situation, and denying the constitutional right of the defendant to be represented by counsel of its own choice.

I recognize, your Honor, that there are no papers before this Court. But I raise it merely to advise your Honor, at the appropriate time to raise such a motion, and ask you to rule whether or not such procedure is proper.

Finally, your Honor,we are appearing on behalf of thenamed defendants with respect to thismotion for

preliminary injunction and I would like the record to show that we are reserving any questions, and we believe there are substantial questions, with respect to jurisdiction both of the person and the subject matter, venue and other matters which may be properly subject to motion under Rule 12.

THE COURT: I take it,Mr.Anderson, what you are proposing, is you are withdrawingyour request for preliminary injunction against the firm and Mr.Taylor and Mr. Murphy.

MR. ANDERSON: That is correct, your Honor.

MR. ORAM: Do you include the motion for preliminary injunction?

MR. ANDERSON: I am sorry, if I didn't make that clear. I ask the temporary restraining order be terminated as of the commencement of the hearing this morning with respect to these three defendants, and we have no application for preliminary injunction with respect to those three defendants.

MR. ORAM: You are, however, proposing to leave the firm, Mr.Taylor and Mr. Murphy as defendants in the action itself?

MR. ANDERSON: That is correct, Mr. Oram.

THE COURT: I think I should have an order on

this. Unless counsel feel that they want to submit an order, I think I can do that myself.

Mr. Oram, do you want an order, submit an order?

MR. ORAM: No, your Honor, not if you can do it yourself. I will, if you like.

THE COURT: I will enter an order as of 10:30 this morning to this effect.

All right, Mr. Anderson, do you want to go ahead?

MR. ANDERSON: Yes, your Honor. I would ask that with respect to any other parties defendant who are bound by the temporary restraining order, that the restraining order continue during the pendency of the hearings and at the close of the hearings I will make an application for whatever other continuance appears appropriate at that time.

THE COURT: All right.

MR. ANDERSON: One further matter, your Honor, that I think may have exacerbated this situation, is that there has been some publicity with respect to this case and I would like to represent to the Court and to all of the defendants that our firm played no part in generating any publicity in connection with this case. Our papers

were filed in court. We received, late Monday evening, a number of requests, I think principally from the multitude of other lawyers interested in IOS matters, for copies and among those requests was a request from the Wall Street Journal.

We didn't discuss the merits or demerits of the case with the Wall Street Journal or with any other news media or publication and I would not do so.

MR. ORAM: Excuse me,Mr. Anderson. Your Honor, I am glad Mr.Anderson raised this question.

If I might, as you listen to Mr.Anderson, as he adduces his proof, you should know, while we make no accusations against his firm, that the fact of the filing of this lawsuit and the fact of the entry of temporary restraining order has caused tremendous publicity. We will demonstrate that it has caused hopefully not, but perhaps irreparable damage to the business of these named defendants. Practically the full -- what was handed to me is a copy of the Dow Jones report that was circulated in Canada, which is of a length and magnitude which I understand is unusual, and sets forth in some detail with some characterizations the nature of the lawsuit.

All sorts of false implications have arisen and have been circulated and, as I say, we will demonstrate that

this has caused significant problems for the defendants.

MR. ANDERSON: Your Honor, we have the authenticated copy of the appointment of plaintiffs Delvaux, Lecuit and Baden, as liquidators of the IIT Fund, bearing the seal and certification of the U.S. Consul. A copy of this has been filed in the SEC against Vesco case.

I would like to offer this as Plaintiffs' Exhibit Number 1, but in lieu of marking the original, since they are somewhat costly and hard to come by, I would ask the Court and Mr. Oram to permit us to mark Xerox copies.

Unfortunately, a copy of this was not furnished to Mr. Oram, and I think hemay have some objections not relating to the fact that we would like to put in a copy instead of the original.

MR. ORAM: That is correct, your Honor. I saw this for the first time 15 minutes ago, and I quite frankly haven't read it thoroughly.

I have no objection to the copy,but I do point out that in the text of the authorization it requires the liquidated file of oath and as far as I know no oath is present or has been filed.

It also requires, I believe, for any action to be taken by and behalf of the liquidators,two signatures

are necessary and I have not seen documents to that effect.

I may have substantial questions as to the standing to sue the plaintiffs in this court but I haven't had an opportunity to consider the matter having just seen the document.

THE COURT: Why don't we receive this as Plaintiffs' Exhibit 1, a copy, without prejudice to the points that you want to raise.

MR. ORAM: Thank you, your Honor.

xxx (Plaintiffs' Exhibit 1 was received in evidence.)

MR. ANDERSON: The plaintiff calls Bruno Lederer.

B R U N O L E D E R E R, called as a witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

THE COURT: Before we start, Mr. Anderson, we have not had an opportunity, the clerk has not had an opportunity to obtain the appearances. I would like everybody who appears here to put his name down on that piece of paper.

All right, Mr.Anderson.

MR. ANDERSON: I ask that there be marked a copy of a document entitled "IIT and International Trust

prospectus, March 1970," which was Plaintiffs' Exhibit 421 in the SEC vs. Vesco case.

I would propose to mark these sequentially in this case. That would be Number 2.

THE COURT: All right.

xxx (Plaintiffs' Exhibit 2 was marked for identification.)

MR. ANDERSON: I would ask that there be marked copy of a document entitled "IIT and International Investment Trust Annual Report 1971," which is a copy of Exhibit 423, in the SEC vs. Vesco case.

MR.BROWN: If your Honor please, my name is Paul Brown, and for the sake of the record, I think I would request the Court ask Mr. Anderson not to refer to the xx SEC vs. Vesco case or the exhibits indicated therein. The exhibits stand on their own in this action. I think one of the problems in terms of publicity has been, as Mr. Oram has indicated, that all of the defendants, includi our law firm, are tarnished with the brush of Mr.Vesco and this has caused incredible publicity. This is not the SEC vs. Vesco action, your Honor. It is ITT vs. Vencap, et xx al, and I ask the Court request Mr.Anderson offer the documents without in any way otherwise identifying them.

THE COURT: That is all right with me. But

as a matter of convenience I think it would be useful, at least for me, Mr. Anderson, if you would give me in due course a cross-reference table, which indicates the Vesco exhibit numbers alongside or in relation to the exhibit numbers in this case, but I will accept Mr. Brown's suggestion and you will just offer the document as an exhibit in this case without reference to the other matters.

MR. BROWN: Thank you.

MR. ANDERSON: Mr.Brown, I accept that and I represent to you and to the Court that in attempting to identify these documents, that I have no intention to leave any inference that that had any probative value and I hope no publicity value.

(Plaintiffs' Exhibit 3 was marked for identification.)

MR. ANDERSON: Would it be acceptable if I just referred to these numbers, just the numbers?

THE COURT: I think they would rather you didn't.

MR. ANDERSON: The next is a two-page document, entitled "IIT Fund Regulations."

(Plaintiffs' Exhibit 4 was marked for identification.)

MR. ANDERSON: The next, IOS Investment Prospectus, copy, March 1970.

xxx (Plaintiffs' Exhibit 5 was marked for identification.)

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Lederer, what is your residence address?

A 3240 Henry Hudson Parkway, Bronx, New York.

Q Are you appearing here today in response to a subpoena?

A Yes, I am.

Q Would you give us a brief statement of your experience following your graduation from college?

A Following my graduation from college, I attended Columbia Law School and was graduated in 1957. I was admitted to the New York Bar in March of 1958.

Thereafter, I served as law clerk to Judge Frederick van Pelt Bryan, in this court.

Then I served as attorney in the tax division of the Department of Justice in Washington until January of 1962.

From January of 1962, until October of 1965, I was an assistant United States Attorney in the Southern District of New York and served in the civil division of that office.

In October of 1965, I accepted employment as

an attorney with Investors Planning Corporation of America, which at that time was a subsidiary of IOS, Ltd. I stayed with Investors Planning Corporation of America until approximately April 1969.

At that time, IOS was required and did divest itself of its interest in Investors Planning Corporation, and the two companies that acquired the assets of Investors Planning Corporation were Equity Funding Corporation and Piedmont Management Corporation.

I stayed with Equity Funding Corporation at the same address, from April 1969 to approximately September of 1969.

I then accepted employment with Piedmont Management Corporation, in Englewood, New Jersey, until about March of 1970, and in March of 1970, or rather, approximately April 1, 1970, I commenced employment with IOS, Ltd., in Geneva, Switzerland.

Q For how long were you employed for IOS, Ltd., Geneva?

A From April 1970 until August of 1972.

Q Would you state, generally, what your duties were during your period of employment by IOS, Ltd.

A My duties generally were related to enforcing compliance with the agreement that IOS had signed with the

SEC, which established certain channels of communication for the mutual funds and established methods by which United States securities could be purchased.

In addition to that, I also had the function of enforcing compliance with certain other rules and regulations, and at a subsequent time, I also had various administrative functions at IOS relating to the funding management companies.

Q Based on you employment experience with IOS, Ltd., would you briefly identify and describe IOS?

A IOS was a corporation which was incorporated --

MR. BROWN: If your Honor please, I think that the corporate character of IOS is something that is a matter of record, contained in various documents, various trust certificates or whatever, Investment Company Act, the regulations they have; I think it is a matter of law and describing the legal character of the company as opposed to the ordinary business functions, I would object to that as not probative.

THE COURT: Overruled.

A IOS was a corporation incorporated in one of the provinces in Canada and it was engaged in many different financial areas, one of which was that it through subsidiary companies managed a number of mutual funds.

In addition, through subsidiary companies IOS also owned certain insurance, banking interests and real estate companies.

Q Would you identify IIT, and International Investment Trust?

A Yes. IIT was a mutual fund organized under the laws of Luxembourg and managed by IIT Management Company, S.A.

Q Would you identify IIT Management?

A IIT Management was a corporation which, I believe, was also organized under the laws of Luxembourg which was the management company for the mutual fund, IIT.

Q Would you please identify, if you can, International Capital Investments (Sterling) Ltd.

A Yes. That was a corporation that was popularly referred to as Incap, which was charged with the responsibility for managing the mutual funds from London, England. It was the successor to a service company which had been known as IOS Management Services, Limited (Bahamas), if I remember the name correctly.

Q When you say managing the mutual funds, does that include IIT?

A Yes, it does.

Q Would you identify Fund of Funds?

A Fund of Funds was one of the IOS managed dollar funds.

Q I show you Plaintiffs' Exhibits 2, 3, 4 and 5 for identification, and ask you if you can identify those documents?

A Yes. Plaintiffs' Exhibit 2 for identification is the prospectus of IIT and International Investment Trust, dated March 31, 1970.

Q Do you recognize that as a copy of an original that you saw during the time you were employed by IOS, Ltd.?

A Yes, this is a copy of the original.

Q Would you refer to Exhibit 3 for identification.

A Exhibit 3 for identification is also a copy of an original annual report for the year 1971, for IIT and International Investment Trust, and I also recognize this as a copy of the original which I saw.

Q Exhibit 4.

A Exhibit 4, are the IIT fund regulations or rather a copy of the IIT fund regulations, and I recognize this as a copy of a document that I was familiar with.

Q Exhibit 5.

A Exhibit 5 is the prospectus of the IOS investment

program, dated January 31, 1970, and this is a copy of an original that I saw when I was with IOS.

MR. ANDERSON: Your Honor, I offer Exhibits 2, 3, 4 and 5.

MR. BROWN: If your Honor please, may we know for what purpose Mr.Anderson is making the offer of these documents?

MR. ANDERSON: Your Honor, it is for a description of the plaintiff IIT and its business, to show that this was a document -- that these were documents produced and used, I think to establish the character of the plaintiff or the company which is in liquidation, its functions, purpose and also how it fit into the IOS complex.

MR. BROWN: If your Honor please, I would have no objection to the documents going in as authentic copies of the documents that they purport to be, but I would object as to the balance. For example, something like fund regulations, a legal internal document of the corporation, seems to me to be self-serving in nature, seems to me to be questions involving legal conclusions on the part of attorneys who possibly prepared this document. I don't see how this is relevant to this proceeding.

THE COURT: I think it is offered just as a descriptive document and I will receive it.

MR. BROWN: If your Honor please, do I understand the nature of your ruling that these are being received solely to describe the general character of the business?

THE COURT: No, they are being received.

xxx (Plaintiffs' Exhibits 2, 3, 4 and 5 were received in evidence.)

MR. ANDERSON: Your Honor, mindful of the problem of creating adverse inferences, I believe it is necessary to understand this case to have an identification of certain individuals, and I would next propose to ask Mr. Lederer, just simply to identify Mr.Vesco, for example, and I do that with the representation that I do not intend to do other than give the Court the necessary background with which to understand a good deal of the testimony and events that will come.

THE COURT: All right.

Q Mr. Lederer, would you identify Robert Vesco, please?

A Yes. Robert Vesco became chairman of the board of IOS, Ltd. I believe somewhere during the year 1971.

Q And for how long did he continue, if you know?

A I can't give the exact length of time, but he did resign as chairman of the board some time thereafter.

Q Would you identify Milton F. Meissner, please?

A Yes. Milton F. Meissner, was president of IOS, Ltd., and subsequently he was also president of IIT Management Company S.A., and some other mutual funds as well.

Q Would you identify Norman Leblanc, please?

A Norman Leblanc was a vice-president of IOS, Ltd., and I believe his title was executive vice-president.

Q Would this have been during the year 1971, for example?

A My recollection is that he was executive vice-president during 1971, and that he resigned the position some time during 1972. But, he continued his participation in the activities of IOS, Ltd., as did Mr.Vesco after their respective resignations.

Q Would you identify Stanley Graze, please?

A Stanley Graze was in charge of investment management for all the IOS managed mutual funds. He operated out of London, and he was, I believe, president of IOS Management Services, Limited, the service company which managed the mutual funds, and then subsequently he was in charge of the corporation I referred to as Incap.

Q International Capital Investment (Sterling) Limited?

A That is correct.

Q Would you identify Mr. Howard Cerny, if you can?

A Mr. Howard Cerny is an attorney in New York City who has represented Vesco and companies controlled by Vesco at various times.

Q Did you and I discuss your testimony before you appeared here this morning?

A Yes, we did.

Q Were we associated in the U. S.Attorney's office while you were in the civil division?

A Yes, we were.

MR. ANDERSON: Thank you. You may inquire.

CROSS-EXAMINATION

BY MR. BROWN:

Q Mr. Lederer, have you met the defendant Mr. Pistell?

A No, I have not. Not to my knowledge.

Q Do you have any personnal knowledge of the fact-- have you seen a copy of the complaint in this action?

A No, I have not.

Q Would it be fair to state that you have no personal knowledge of the facts in the complaint?

A Well, not having seen it, I can't say that.

Q Did you discuss the complaint with Mr. Anderson?

A No, I didn't.

Q Did you request that he serve you with a subpoena?

A I requested that Mr. Anderson serve me with a subpoena if he wanted me to be present here today, yes.

Q Why was that, sir?

A I felt that my present employer might prefer that I not testify in court voluntarily, but if I was compelled to, I would.

Q Who is your present employer?

A The New York Stock Exchange.

Q Did you have any discussion with Mr. Anderson as to whether or not a subpoena would be served to make it appear as if you were appearing involuntarily here?

A No.

Q You agreed to come here and testify, voluntarily?

A I agreed to come here and testify voluntarily if I was served with a subpoena.

Q Do you have any knowledge concerning the organization of a defendant known as Vencap, Ltd.?

A No, I do not.

Q Do you have any knowledge of a corporation

known as Intervent, Inc.?

A No, I do not.

Q How about Intercapital, N.V.?

A It does not ring a bell, no.

Q Do you have any knowledge concerning the purchase by IIT of $3 million of stock in a company known as Vencap, a defendant?

A I do not.

Q Do you have any knowledge as to the basis on which IIT made an investment in Vencap?

A I do not.

Q Did you ever see Mr. Pistell, who is the defendant sitting over here, in the presence of Mr.Milton Meissner, Mr. Norman Leblanc, Stanley Graze?

A Not to my knowledge or recollection, no.

Q Do you know what the current status of IIT is?

A I only know what I have read in the newspaper, that liquidators have been appointed, but I don't have any independent knowledge.

Q When was it, sir, that you resigned from any connection with IOS?

A August 15, 1972.

Q When did you sever your connection with Equity Funding?

A That would be approximately September of 1969.

Q What were the circumstances under which, if you can tell us, you resigned from positions with IOS?

A On August 15,1972?

Q Yes.

A I resigned because I felt that transactions were being entered into and I was being asked to be an authorized signatory to certain transactions, and I was not being provided with any information with respect to those transactions,and I felt that my position was untenable and that I had to resign.

Q Did you testify, sir, before the Securities and Exchange Commission either in the case of SEC vs. Vesco, or in any investigative proceedings of the Commission?

A I testified in the case of SEC vs. Vesco. I didn't testify in any investigative proceeding, but I was interviewed by the SEC during their investigation which preceded the case of SEC vs. Vesco.

Q Were you represented at all in any phase of the so-called Vesco matter by counsel?

A I was not.

Q When you were employed by IOS, did you have a title?

A It is very difficult to answer that question because I have always felt that I didn't have a title. When I was asked to come to IOS, I was not given a title, at no time did I use a title. However, I was referred by some people as the compliance officer. I know that in a letter offering me employment, I was told that I would be employed with a title of attorney. However, I feel that I never really had a title while I was with IOS.

Q Would it be fair to state from your testimony, other than certain administrative functions, you stated you assumed, a good portion of your time was spent as an attorney, as an in-house attorney?

A That is incorrect.

Q I thought you indicated you were compliance officer and I assumed you meant by that something like a compliance counsel in a brokerage house, who sees the corporation he represents complies with certain rules and regulations.

A It was quite different there at IOS. If you want to know what I did, I really would have to start at the very beginning because my functions changed during the time that I was with IOS. If you want me to be specific --

Q I just wanted to get a general idea. Were there, as of 1972, any offices that IOS maintained in the

United States?

A As of 1972, I would doubt it very much. I wasn't aware of any offices maintained by IOS in the United States.

Q Would that be true of IIT also?

A Yes,it would be.

Q Is that because it was essentially, shall we say, an offshore fund, a Luxembourg corporation?

A Yes.

Q To your knowledge, was there a policy that IIT, IOS, or any of these other funds you have described, would not actively do business in the United States?

A That is correct. If I may qualify that, actively do business is, of course, very broad, and the funds did invest in United States securities through brokers in the United States. I don't know whether that constitutes actively doing business.

Q I mean they didn't have offices here or, to your knowledge, bank accounts or employees, things of that sort, didn't pay taxes here?

A The funds had bank accounts in the United States. They had bank accounts in the Bank of New York and in other banks in the United States.

Q Was it a policy, to your knowledge, of IIT to

solicit purchases of stock in IIT, or shares in the fund, if you will, from United States citizens?

A During the time that I was associated with IIT, it was not.

Q Can you tell us why that was so?

A That was because under the 1967 order between the SEC and IOS, they were not permitted to solicit American customers.

Q Were you aware of the fact, and do you know for a fact that IIT had American stockholders?

A Not for a fact. Not having seen the list of stockholders and not having verified their nationalities, I certainly don't know it for a fact.

THE COURT: Are there stockholders in IIT?

THE WITNESS: Mutual fund shareholders is what I mean, when I say stockholders, your Honor.

THE COURT: What kind of interest did they have in IIT, the shareholders?

THE WITNESS: The shareholders, in effect, owned IIT, just like the shareholders of an American mutual fund in effect own the mutual fund, so that it was completely owned by the shareholders and managed by another company which was in turn owned by IOS.

THE COURT: Did some shareholders have a larger

interest than others or were they all equal?

THE WITNESS: They were not equal, your Honor. Some shareholders definitely had a larger interest than others.

THE COURT: How did one become a shareholder of IIT, what were the mechanics? Did you get a share or a piece of paper?

THE WITNESS: That is correct, your Honor, it would be a piece of paper that would say they were shareholders, or they could participate in the IOS investment program and become shareholders through periodic acquisition of shares.

Q Do you know whether or not,sir, and I just have a few more questions, from your knowledge as a compliance officer, if Luxembourg had any statutes, rules and regulations which governed the establishing and operation of mutual funds which were located there or formed there?

A I am not aware of the Luxembourg laws or regulations, other than fund regulations themselves.

Q Do you know whether or not IIT sought to register in the United States as an investment company?

A I don't know.

Q Do you know whether or not they sought to register any of their shares or any shares of any subsidiaries

of IIT with the Securities and Exchange Commission in the United States?

A I don't know.

MR. BROWN: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Lederer, when you used the phrase a few moments ago in response to one of Mr. Brown's questions you didn't know of any Luxembourg regulations other than the fund regulations themselves, were you referring to the regulations set forth in Exhibit 4?

A That's correct.

Q Would it be fair to say that IIT was roughly analogous to a mutual fund in the you might say Massachusetts Investors Trust?

MR. BROWN: If your Honor please, I object to Mr. Anderson leading the witness. I think if he wants to ask the witness, who has not qualified himself as an expert in the financial market, to characterize IIT, he should do so but not in leading fashion. I think it is --

THE COURT: I think it is all right, Mr. Brown. Obviously the fact that this may or may not be like Massachusetts Investors may not mean anything to me.

You can answer that question.

A It is my understanding that it is a mutual fund in the same sense as Massachusetts Investors Trust is a mutual fund.

THE COURT: What do you mean by that?

THE WITNESS: Basically, it is a mutual fund which sells its share pro rata shares, to the public, and which pays a management fee to a separate entity which is called the management company, and in that sense it is very similar to domestic United States mutual funds like Massachusetts Investors Trust.

Q What does it do with the funds received from its shareholders?

A It purchases securities. Now, IIT purchased securities of many different companies, both in the United States and outside the United States. What I mean is, American and non-American companies.

Q If you know, could a fundholders shares in IIT be redeemed, sold back?

A Yes.

Q Would you explain that process?

MR. BROWN: If your Honor please, I hate to rise and be overly technical, but I respectfully submit

that this is improper redirect examination. There was ample opportunity to Mr. Anderson on direct examination to cover certain subjects, I think we have a lot of ground to cover today and my cross-examination didn't touch upon the nature of the shares or redeeming pledges, etc., etc., and I respectfully ask that line of inquiry be ceased, your Honor.

THE COURT: I think I will allow it.

A A shareholder could redeem his shares at any time for the net asset value which was computed daily. The net asset value multiplied by the number of shares would be the price that the shareholder would receive on redemption.

Q Mr.Brown referred to an IIT policy not to solicit American stockholders.

Do you know whether that refers to, in your response, were you referring to persons who were citizens of the United States, residents of the United States or persons with U. S. addresses?

A I think basically it would be all of those, Mr.Anderson.

Q What if anything do you know about what IIT had, so-called American stockholders?

A Prior to the 1967 order of the SEC, IOS salesmen

had sold IOS and other funds to many different individuals regardless of nationality and particularly to American servicemen overseas. So that at one time prior to 1967, I believe it is fair to say that all the mutual funds had American stockholders. As part of the agreement with the SEC in 1967, my best recollection at this time is that the American stockholders had to be given an opportunity to redeem their shares under certain conditions, but I do not know what those conditions were at this time.

Q Do you know whether or not all of the American stockholders did in fact redeem their shares?

A No, I don't know that all did,and I really can't say how many did, but I think all were given the opportunity.

MR. ANDERSON: Thank you. I have nothing further.

RECROSS-EXAMINATION

BY MR. BROWN:

Q Mr. Lederer, you indicated before to your knowledge it was not a policy of the IIT to sell its shares to American citizens, is that correct?

A During the time that I was associated with IOS, that's correct.

Q Would it be fair to say that was because there

was an order entered which said don't sell shares to American servicemen, American citizens?

A That's correct.

Q And in your opinion, as an attorney and compliance officer, if IIT subsequent to that time sold shares to American citizens, from your knowledge of that, would it have been in violation of that order?

A I believe that is true.

MR. BROWN: Thank you, sir.

MR. ANDERSON: Your Honor, my colleague Mr. Neal Morse will handle the next witness, with your permission.

THE COURT: All right.

(Witness excused.)

J O H N A N D R E W R O U S E, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORSE:

Q What is your address, please?

A #506, 141 Lyon Court, Toronto, Ontario.

Q Are you a Canadian citizen?

A Yes, sir.

Q By whom are you employed?

A Clarkson & Gordon.

A Chartered accountants.

Q In what capacity are you employed?

A I am a manager in computer audit.

Q Are you a chartered accountant?

A Yes, sir, I am.

Q Could you please tell us if a chartered accountant is roughly the equivalent to a certified public accountant in this country?

A I believe so, yes.

MR. MORSE: I ask the clerk to mark this document for identification. We will be offering in evidence, your Honor, only a portion of this document, so I would like the clerk to mark for identification only the portion of this document up to where this paper is.

(Plaintiffs' Exhibit 6 was marked for identification.)

MR. MORSE: Would you mark as Plaintiffs' Exhibit 7 for identification a similar type document in the same manner.

(Plaintiffs' Exhibit 7 was marked for identification.)

MR. MORSE: I offer to be marked as Plaintiffs' Exhibit 8 for identification a two-page memorandum from Al Doneam to Jack Bedell, dated January 10, 1974.

(Plaintiffs' Exhibit 8 was marked for identification.)

MR. MORSE: A one-page memorandum from John Rouse to Jack Bedell.

(Plaintiffs' Exhibit 9 was marked for identification.)

MR. MORSE: I beg the Court's indulgence but I need the exhibits marked for identification.

Q I show you Plaintiffs' Exhibit 6 marked for identification and ask you if you can identify it, the portion only up to the paper here.

A This is a listing we prepared of plan holders with a country or residence code equal to the United States of America and it is a listing of those people with that code.

Q It is a listing of shareholders of what?

A Of International Investment Trust and the date on the report is May 31, 1972. I believe that should be May 31, 1973. It is purely an error in a heading.

Q Does that document purport to list shareholders of ITT who are American residents or American citizens or what?

MR. ORAM: Your Honor, if we are going to have testimony with respect to the document, I think it

should be offered so any objection can be made. I think it has been identified.

MR. MORSE: Let me qualify it a bit further.

Q Was this document prepared under your direction and control?

A Yes, it was.

Q How was this document prepared?

A It was prepared via computer obviously in our firm, and based upon magnetic tape files which we received from France, and extracted the information.

Q When you say "received from France," from whom or what in France were the magnetic tape files received?

A I myself didn't secure the tapes, but the tapes I believe came from Verney-Voltaire.

Q Would you identify what that is?

A Verney-Voltaire is the EDP center, IOS, Ltd.

MR. MORSE: I offer in evidence Plaintiffs' Exhibit 6.

THE COURT: What part are you offering?

MR. MORSE: The list of shareholders of IIT. We are not concerned with the other funds at this point. They are listed there also.

MR. ORAM: Your Honor, I object to that document for a variety of reasons. One, the witness himself has

testified while the document bears the date 1972, it relates to 1973. I do not know nor do I understand the purpose for which it is being offered. We have no foundation that it was prepared from records readily kept in the ordinary course or anything else, so I object to it in its entirety.

MR. MORSE: May I respond, your Honor?

THE COURT: Yes.

MR. MORSE: This witness, although I don't believe personally ran the computers to make the printouts, it was done under his direction and control from tapes in the custody of his firm,which is a chartered accounting firm.

THE COURT: What is the purpose of it?

MR. MORSE: To show one method of listing American stockholders. We have an identical record, one of which lists by citizens of the United States and one by American residents of the shareholders of IIT as of May 1973.

MR. ORAM: The document says May 1972, your Honor.

MR. MORSE: The witness testified it was an error.

MR. ORAM: The error is on the date. I suggest there may be other errors.

THE COURT: Let's assume for the moment it is May 31, 1973. I still am not clear, Mr. Morse, why you need it in evidence.

MR. MORSE: I believe it is the contention of the defendants that there are no American citizens, national or resident shareholders of IIT.

THE COURT: I didn't understand that was --

MR. MORSE: Will the defendants concede --

MR. ORAM: We will concede nothing. You have made an allegation that there are.

MR. MORSE: That is correct, your Honor. If they don't concede it, we must prove it and the list of shareholders prepared by the chartered accountants --

THE COURT: All right, I will receive it. I would like to know about the date. There ought to be a way to establish whether it is 1972 or 1973.

(Plaintiffs' Exhibit 6 was received in evidence.)

THE WITNESS: The date that is on the report is a very easy means of putting a date on. It is simply, for example, I could say that the date I want on that report is May 31, 1972, although I may actually be using a file as of May 31, say, '73.

THE COURT: I just don't understand that. Why

doesn't it say 1973 if it means 1973?

THE WITNESS: Because of pure, simple mistakes that we put in '72 instead of '73.

MR. MORSE: I believe what the witness is saying when they programmed the computer to print out the date, somebody pushed a 2 instead of a 3, is that correct?

THE WITNESS: Yes, that is a simple way of putting it.

THE COURT: Does it make a difference whether it is '72 or '73?

MR. MORSE: No, your Honor, it does not.

THE COURT: What Mr. Oram says, bothers me. If there is one mistake, perhaps there are others.

MR. MORSE: Your Honor, when shareholders lists are generally offered it is conceivable there are mistakes in the list. People make typing mistakes and things like that. We are not vouching for the fact this shareholders list is 100 per cent accurate. There are probably typographical errors and things of that nature.

THE COURT: All right.

MR. MORSE: I offer in evidence Plaintiffs' Exhibit 7, your Honor --

MR. ORAM: I have the same objection, your Honor. I don't know whether there are any date problems.

I haven't seen it.

MR. MORSE: I believe it is exactly the same, your Honor. Yes, also the --

THE WITNESS: This report was based upon a citizenship code.

THE COURT: The other one I take it is part on residents?

THE WITNESS: On a residents code, correct.

THE COURT: All right, I will receive it.

(Plaintiffs' Exhibit 7 was received in evidence.)

Q I show you Plaintifffs' Exhibit 8 for identification and ask you if you can identify it.

A This is a letter written from my partner to another partner in the firm, which was a covering memo together with one of the reports there, the one that was based on country code or residents, which would have been prepared in our normal course of business.

MR. MORSE: I offer in evidence Plaintiffs' Exhibit 8.

MR. ORAM: Your Honor, are there copies of these exhibits that are offered so we can look at them?

MR. MORSE: For Plaintiffs' Exhibits 8 and 9 we have copies.

MR. ORAM: The two-page memorandum?

MR. MORSE: I will give you a copy of that.

THE COURT: Do you have any more?

MR. MORSE: I just have Plaintiffs' Exhibit 9.

MR. ORAM: Is that the second memorandum?

MR. MORSE: The one-page memorandum.

THE COURT: Mr. Anderson, do you have additional documents, exhibits?

MR. ANDERSON: Yes, your Honor. I believe with slight exception, every exhibit that will be offered or referred to from this point forward, will be from the transcript of that preliminary hearing that you held, or the subsequent deposition testimony produced by the defendants.

THE COURT: My point is, I take it you have not furnished copies or an indication of what the documents are to Mr. Oram.

MR. ANDERSON: That is correct, your Honor, with respect to the documents that we have introduced heretofore.

THE COURT: How about the documents that are coming?

MR. ANDERSON: The documents that are coming, your Honor, they have furnished us the copies, so they

have the originals or copies.

THE COURT: All right.

MR. ANDERSON: I would have to qualify that. They furnished those copies, I believe, to the SEC, and they do have copies of those.

MR. ORAM: Your Honor, I object to the introduction of Plaintiffs' Exhibits 8 and 9 on the ground these documents refer to computer printerouts of May 1, 1973, when the document says May 1972. There has been no establishment that these copies accompanied these memoranda and he is not the author.

MR. MORSE: He is the author of the one-page memorandum, and if it would help to qualify --

THE COURT: May I see these, please.

MR.MORSE: Your Honor, I can ask a few more questions to clarify the matter.

THE COURT: All right.

Q Mr. Rouse, are you the author of what has been marked as Plaintiffs' Exhibit 9 for identification?

A The single page memorandum?

Q Yes.

A Yes.

Q Is this copy of the memorandum a true and correct copy?

A Yes, it is.

Q Does it refer to Plaintiffs' Exhibit 7 previously entered in evidence in this matter?

A Yes.

MR.MORSE: I offer it in evidence, your Honor.

THE COURT: 8 or 9?

MR. MORSE: 9.

MR. ORAM: To which of the printouts, may I inquire, does Exhibit 9 refer?

MR. MORSE: Exhibit 9 refers to 7, which is the printout by citizenship code.

MR. ORAM: Bearing the date May 31, 1972, is that correct?

MR. MORSE: Yes, but if you refer to the first paragraph of Exhibit 9 I believe you will see it picks up the mistake previously made.

MR. ORAM: It says at May 31, 1972.

MR. MORSE: Yes. That was the mistake made in the caption of the printout.

THE COURT: All right, I will receive 8 and 9.

xxx (Plaintiffs' Exhibits 8 and 9 were received in evidence.)

(Recess.)

MR. MORSE: Your Honor, the witness has

indicated to me that Clarkson & Gordon would like to take the originals of exhibits 6 and 7 in evidence back to Canada because they need them in the continuance of their business and I don't believe the defendants would have any objection if we supplied ZErox copies to them and to the Court.

MR. ORAM: None at all.

MR. MORSE: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. ORAM:

Q Mr. Rouse, you indicated that the computer printouts on Exhibits 7 and 8 were prepared from residents codes and citizenship codes, is that correct?

A That is correct.

Q How were those codes established? How did you know when you coded this for purposes of the printout or your records, that a man was a citizen of the United States or wherever?

A I have a -- we, the firm, have what we call a record layout of the magnetic tape files from which that was derived. We also have a piece of documentation that provides the logic behind the original bookkeeping system on which these records were maintained in Verney-

Voltaire and from that we were able to derive in such and such a position something called a country code and in such and such a position a citizenship code, and here is the tape.

Q What is the raw data, if you know, that went into the records from which this printout was prepared?

A As I understand it --

Q Let me perhaps help you a little.

A Yes.

Q How was it established in the first instance that Dr. Samuel P. Olsher, listed on Plaintiffs' Exhibit 1, Page 1, first column, was a resident of the United States?

A Based upon a residency code that said on his magnetic image on the tape, it said Doctor So and So, over here has got a residency code of U. S.A. So searching the file, out he comes.

Q My point is, how did he get that residency code? Was he asked his residence at the time he became a holder of the fund?

A I can't testify at all -- I have to assume Verney-Voltaire did the bookkeeping. I can't tell you how that doctor initially got onto that tape. All I can say is, we were given a tape purportedly from Verney-Voltair from which we were able to extract the information.

I can't testify as to the origin, say, the creation of that tape. All I can say is, given that tape I have extracted information that somebody else has put on.

Q From your own knowledge then, you can't say that any of the individuals listed in either Exhibit 7 or 8 are either citizens or residents of the United States?

A No, because I have not confirmed directly to them or we, the firm --

Q The answer is no, you can't testify that they are, is that correct?

A Correct. The magnetic file is only as good as whoever created it.

Q And you can't testify to the creation of that tape?

A No, I can't. All I can do is say that we were able to reconcile control information from the generation of those tapes back to control information purportedly provided from Verney-Voltair which said the total number of people is X.

Q But that reference to control information doesn't change your answer that you of your own knowledge can't testify as to the residency or citizenship of anyone listed in Exhibit 7 or 8?

A No, because I didn't create the tape.

THE COURT: I suppose you didn't write these people, or did you?

THE WITNESS: The listing there?

THE COURT: Yes.

THE WITNESS: As far as I am aware there has been no direct correspondence, at least within our firm anyhow, as far as I know it, to any plan holders in IIT or any fund that I am aware of. That is not to say there isn't. I just don't know.

THE COURT: As far as your firm is concerned does it make any difference whether they live in the United States or Saudi Arabia? Did you rely on the fact the documents show they were U. S. residents or U. S. citizens?

THE WITNESS: I am not sure I really -- all we did was search a file and look on that file for U.S.A., or citizenship code that --

THE COURT: Why would you want to have a list of people that are U. S. residents or U. S. citizens?

THE WITNESS: Again, as I understand it, this I think was at a request possibly from the SEC, or it was at a request from the Ontario trustee for whom we were original agents at one point. I am not really too sure. I was just sort of given the task,here are the files, pull out this information.

MR. ORAM: I think, your Honor, in my previous question I referred to Exhibits 7 and 8. That was an error. It should have been 6 and 7.

Q Can you tell me, Mr. Rouse, the circumstances under which these documents, Exhibits 6 and 7, were prepared?

A The physical environment, so to speak?

Q On whose request were they prepared?

A My partner requested that, "John, will you please generate these."

Q Did he tell you why he wanted these prepared?

A I thought that is what I explained to his Honor.

Q Perhaps I missed it. Will you tell me?

A As I understand it,and I am really not clear on this, it could possibly have been at a request from the SEC or possibly it was at a request from -- it might even have been from people in Luxembourg, but I just really don't know,or it might have been at a request from the Ontario Trustee for whom at one point I believe we were acting as an agent of his.

Q Do you know to whom copies of 6 and 7 were delivered?

A At the end, no, I don't. All I know is, I

produced it and really gave them as to those memos there. That is where I gave them.

Q I take it that Exhibits 6 and 7 are not the regular or total shareholders lists of International Investment Trust, is that correct?

A Yes, that's correct.

Q Turning to Exhibits 8 and 9, do you have a copy of that? Exhibit 8 is the two-page memorandum. Would you read the paragraph on Page 1 beginning with the words "Our selection"?

A "Our selection has been based on a residency code in the files. However you will notice some fund-holders may have changed their residence subsequent to the participation in the IOS program and neglected to advise IOS thereof. These accounts have been printout for review in case a followup is desired. Of course it is possible legal residency is still in the United States or alternatively there may have been a coding error in the IOS files."

Q Would you explain to me what that paragraph that you just read means, what it refers to?

A Okay. It means, and as I indicated earlier, because we didn't create the information of those files, these were files that we obtained from an installation

at Verney-Voltaire, purportedly to be the books of account of the organization, we can't testify to their initial creation, authenticity and so forth, that really we can just analyze them and give out the information as sitting in the files. It is conceivable the people creating the files may have made coding errors and so forth, or may have not put in change of addresses, like any standard computerized accounting system that we are all familiar with.

When you move, maybe your change of address thing doesn't get in it or -- you know, and so forth.

Q The possibility I guess is already established because we don't know the date, we don't know what date we are talking about. The possibility of error has been established.

A Yes, we do. I know.

THE COURT: You know that it is '73?

THE WITNESS: Yes, my best information is it should be May 31, 1973.

Q I beg your pardon?

THE COURT: But you think these were put together for the SEC or some Governmental agency, is that right?

THE WITNESS: Your Honor, I just -- I think

anything I would say in that regard, I don't think it is worth the value because I don't know for sure and I think I am just liable to confuse more than clarify.

THE COURT: Of course, the hearing in the SEC case was either completed or almost completed by May 31, 1973. This will be put together for -- if this would have been put together for the SEC it would have been pretty late.

THE WITNESS: You are talking about something I don't know anything about at all.

THE COURT: Yes, but I am suggesting your notion that the date is 1973, rather than 1972, at least in my mind raises a question. What makes you think it is 1973, last year? Because you remember it?

THE WITNESS: Yes. It is something that, you know, I will attempt to try to recall sitting here. I think that is something that could be proven with very little difficulty, being able to go back to Canada and contact somebody in Canada. Sitting here, I --

THE COURT: I think, Mr. Anderson -- I am not sure it makes any difference, but it has become sort of a minor cause celebre -- I think we ought to establish whether the date is '72 or '73. I would propose that the witness' firm can make it clear to us one way or another.

I don't mean to do it right now, but in the course of the next day or so.

MR. ANDERSON: Fine.

BY MR. ORAM:

Q This document or these documents, Exhibits 6 and 7, do not purport, I take it, to afford the lists of the stockholders of IIT as of June 10 this year, the date of the filing of the complaint in this case?

A Definitely not.

Q I take it the same is true that these exhibits 6 and 7, do not purport to establish stockholders of IIT in June or July of 1972.

A I would say that is probably correct. June and July of '72?

Q June and July of 1971.

A If it is May 31, '72, obviously not. If we say May 31, '73, possibly not, although I understand things were frozen in September, October or November '72, and it could conceivably be a close representation.

Q But you can't testify it is?

A No, I certainly cannot.

MR. ORAM: I have no further questions, your Honor. Your Honor, I think in light of the testimony of this witness with respect to Exhibits 6 and 7,

ew our objection to their admission.

T: Is that because of the uncertainty

: For a variety of reasons, your
een uncertainty as to the date, there
the information contained in there,
ay of testifying to the accuracy,
izens or --

T: I think, Mr. Oram, I will leave
It does seem to me, however, that
I can't assume from these documents,
m them, that there were, in fact, any
t is the right word, of IIT who were U.S.
itizens. All I know is, here is a
ut of, I assume came out of the files
at Verney-Voltaire, but as hard
fact U. S. residents or U. S. citizens
s in IIT, it seems to me, something more

E: We have no redirect, your Honor.
RT: Thank you.
excused.)
RSON: Your Honor, was that the final
ct to the weight to be accorded those

documents?

THE COURT: That
moment.

MR. ANDERSON: T
We would argue
records would be proof of t

THE COURT: But
witness who can tell me tha
records or about the busine
effect, sent for this and r
is no question about the au
as being a document that ca
maintained by IOS in Verney

MR. ORAM: I d
to that effect, your Honor.

THE COURT: I j
assuming. I didn't say th
I also suppose that these r
and that they are, in fact,
there has been an objection
to do a little more. I a
have to do about it, I haver
you haven't either, but I th

MR. ANDERSON: Th

is just my thinking at the

hank you.

documents prepared from business

he facts as stated.

I don't think you have had a

t they were prepared from business

ss records. This witness, in

eceived it. I take it there

thenticity of this document

me out of the tapes which were

-Voltaire.

on't think there is any testimony

ust said, Mr. Oram, I am

here was evidence to that effect.

ecords were not manufactured,

reasonably correct, but since

made, Mr.Anderson, you have

n not quite sure what more you

n't thought of it, and I suppose

hink we have a problem.

hank you, your Honor. I am not

convinced that this is a necessary element of the proof on the preliminary injunction, in any vent.

Your Honor, we have two things I would like to work out the sequence. We intend to offer as an exhibit Mr. Pistell's testimony before you at the preliminary hearing, and the exhibits that were introduced during the courae of his testimony at that time.

We also intend to offer the testimony at deposition subsequent to that hearing and the associated exhibits.

We also would like to offer testimony of Mr. Pistell at a private hearing that preceded the hearing that you had on preliminary injunction. I do not have a copy of that, and I asked Mr. Taylor to bring one. Since you sat through five days, I won't propose to read any of that testimony to you. I have given Mr. Oram designations of the portions that we feel are most pertinent.

Now, the other thing we have today, or immediately following our testimony from American National Bank, bring representatives who have brought along records, of which we have some copies because of the earlier proceedings, but these are documents which Mr. Oram was shown a few minutes ago and in fact most of them were documents that we were shown a few minutes ago.

I think the easiest way to proceed now is to call American National Bank, but I do think the question we should resolve before lunch is how you want to handle those three pieces of testimony and the associated exhibits.

MR. ORAM: Your Honor, with respect to the testimony of Mr. Pistell, Mr.Anderson and I worked out a stipulation which stipulation only goes to the authenticity that the questions were asked rather than calling the reporter.

We of course reserve any rights with respect to the relevancy, materiality or any other objection we may have in this or subsequent proceedings.

MR. ANDERSON: That is correct.

THE COURT: Is that the stipulation that was handed to me earlier this morning?

MR. ORAM: That is correct.

MR. ANDERSON: Yes, your Honor. This is simply whether you want these read with someone in the box or can they be admitted --

THE COURT: I think I would just like to have them admitted as exhibits. If I may be a little informal for a moment, I will miss the opportunity to hear Mr. Pistell testify again, because I enjoyed him as a person very much, but I think it would perhaps be easier if I

would receive them as individual documents.

Can you tell me something about your timetable, Mr. Anderson?

MR. ANDERSON: Yes, your Honor. I believe that A and B, the witness will testify that the documentation with respect to the custody account for IIT which they had, just didn't get here today, and so I have to make some kind of an arrangement to get those documents in.

Then I have two witnesses which I propose to put on this afternoon, and I inform Mr. Oram the schedule would be one of them to testify with respect to corporate law, that these expenditures -- I am sorry, not to get into specifics of the fact, but to advise your Honor with respect to the corporate law aspects of expenditures and management fees of the magnitude we see.

The second witness will testify with respect to the normal, I would say, custom of the trade with respect to profit participation fees and expenses of concerns set up to go into the venture capital business.

THE COURT: Mr. Oram, do you know at this point whether you are going to have any witnesses, testimony?

MR. ORAM: Yes, your Honor. I think that Mr.

Pistell will testify. I expect perhaps Mr.Taylor and Mr. Murphy will testify as well.

THE COURT: My point is, I am not interested in knowing about the substance of the testimony at this point. I was just interested in the timetable. I will have to adjourn this afternoon at 3:30. Obviously, we are going to have to go into Monday, I take it.

MR.ORAM: Your Honor, we have a very significant problem here. The damage that is occurring to Vencap and related copies is escalating and has, ever since this complaint has been filed, and a temporary restraining order has been issued.

We would hope, your Honor, we could move swiftly enough to resolve this matter here today so Mr. Pistell and his companies can go about their business. We are in a very, very significant and difficult time. We propose to put Mr. Pistell on the stand to disclose that to your Honor, in detail.

But, I am in a very difficult position urging you to go beyond your scheduled time, but it is absolutely imperative we do so.

THE COURT: I don't really see, even if we were to stretch the time a little, how we can do it. Mr. Anderson has two witnesses, you have three or four.

I don't see how we can do it today.

MR. ORAM: It may be it will be possible to --

THE COURT: This all assumes even if we did it all today I can make up my mind today.

MR. ORAM: I appreciate that, your Honor, but we propose to urge you as strongly as we can that that is exactly what is required in this case. I think --

THE COURT: I don't think that it can be done today. The only thing I can suggest is, let's break for lunch now, let's get back a quarter to 2:00. If you can arrange something with Mr. Anderson between now and a quarter of 2:00, so we can dispose of this matter this afternoon, of course I would be delighted.

I just don't see that it is possible.

MR. ORAM: Perhaps there is something, I don't know but because of the importance we will certainly make an effort,your Honor.

THE COURT: I must say, Mr. Oram, I am concerned about your problem. I just don't see how we can do it that quickly.

Apart from the problem of hearing the testimony that I am told I should hear, I have the problem of reaching a conclusion on this.

MR. ORAM: I understand, your Honor, but

we are here on a motion for a preliminary injunction, in which there is a very significant burden of proof placed on the party.

This is a drastic remedy. If it appears to your Honor that the burden has not been met, the matter can easily be resolved and I suggest when it becomes apparent with Mr.Pistell on the stand of the magnitude of the damage which is the other element involved, occurring to Vencap and related companies, you will find we will be able to come to a resolution this afternoon at least as far as the preliminary injunction aspects are concerned.

THE COURT: All right, quarter to 2:00.

(Luncheon recess.)

241A

hprf pm 1

AFTERNOON SESSION

1:50 p.m.

MR. ORAM: Your Honor, Mr. Anderson and I did speak during the lunch recess and we didn't come to a solution regretfully. If, for purposes of our planning our schedule this afternoon we do not complete, would it be possible for us to work tomorrow?

THE COURT: Of course, anything is possible. I think what I would like to suggest, Mr. Oram is this, if it is all right with you, Mr. Anderson, I would like to hear from you and perhaps from Mr. Pistell, why time is so much of the essence here.

As I have indicated, there are a lot of things that I feel I still need to learn about this connection with this matter; I find it troublesome and I am going to have to spend some time thinking about it. My very strong inclination is to think that I can't deal with it this weekend. However, I would like to hear from you and Mr. Pistell as to why it is important why I do.

MR. ORAM: May I proceed, then, your Honor?

THE COURT: Yes. Is that all right, Mr. Anderson?

MR. ANDERSON: That is acceptable, your Honor.

Your Honor, in light of this development, I think it might be well if I excuse at least one of my

hprf 2 242A

witnesses until Monday, and I will also excuse the people responding to the American National Bank supboena until Monday. They have been here until 10:00 o'clock.

THE COURT: That's all right, except Mr. Oram is suggesting that we work tomorrow.

MR. ORAM: It may be, your Honor, that we will conclude with Mr. Pistell's testimony in time to go back to our usual order.

THE COURT: I have an appointment at 3:30 which I can't change without some difficulty. But, I would suggest perhaps your witnesses might prefer to work for a little while and see what happens in case we need them tomorrow.

MR. ANDERSON: The American National Bank return is incomplete --

THE COURT: You told me that, yes.

MR. ANDERSON: I wonder if it wouldn't be better to send them back to work this afternoon and get the additional records and subject to telephone call, return tomorrow, if we do proceed tomorrow.

THE COURT: All right.

MR. RAND: Your Honor, may I address the Court?

THE COURT: Yes.

MR. RAND: Your Honor, in regard to the subpoena

hprf 3

served upon officers of the bank there is a problem. The subpoena itself is quite lengthy and quite a vast one. It was served yesterday about noon. We have made every effort as reasonable to get as many of the documents as we can get together to comply with the subpoena. The problem is, as your Honor is aware, there are volumes and volumes of documents. The bank has produced thousands of documents. They are in various places, two counties in New Jersey, Essex and Morris County.

I can't really represent to the Court in the short time required we can get all the documents by Monday morning because of the physical problems involved.

THE COURT: Mr. Rand, all you can do is what you can do.

MR. ANDERSON: Your Honor, we have indicated that we are interested in, first of all, the securities involved here, which are here today.

Secondly, the documentation showing the transfer of three million dollars out of ITT's account which I understand is here today, and the custodian account transactions in or about the period October 1972.

MR. RAND: Which would be the monthly statement. We have no problem presenting that. The problem is, the first item in the subpoena is any and all transactions

244A

hprf 4

involving ITT, from beginning to the end.

THE COURT: I take it from what Mr. Anderson has said, he is not going to insist on that.

MR. ANDERSON: I had thought we had conveyed that earlier.

MR. RAND: As long as that is clearly understood there wouldn't be any problem. I assume with the other subpoenaes, we will produce Mr. Castle, on Monday.

MR. ANDERSON: Or tomorrow, if Judge Stewart decides tomorrow. So American Bank is then released for the time being subject to telephone call.

THE COURT: That is correct.

All right, Mr. Oram.

R I C H A R D C. P I S T E L L, called as a witness by defendants, being first duly sworn, testified as follows:

THE COURT: I think, Mr. Brown, before we get into merits, I would like to know why this urgency about this, why it can't wait until the usual course, sometime next week.

MR BROWN: Yes, your Honor. I would make a requst to the Court Mr. Pistell's testimony this afternoon be limited solely to the irreparable harm and prejudice sustained to Vencap and the urgency of the situation

compelling our request of the ROB lifted and that the balance of his testimony which would relate so to speak to the merits, I will not inquire to those facts at the present time and to put it off until the appropriate order. Would that meet with your Honor's approval?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Pistell, do you hold a position in the defendant Vencap, Ltd.?

A That is correct, sir.

Q What is the position you hold, sir?

A I am a major stockholder and chairman of the board and chief executive officer.

Q Was Vencap incorporated, sir?

A In Nassau, Bahamas.

Q Who makes investment decisions in behalf of Vencap?

A Primarily I look for deals and the board of directors pass on the deals.

Q Did there come a time recently when a decision was made on behalf of Vencap to purchase a certain security in Canada?

A That is correct, sir.

Q What was the name of that security and when

246A

hprf 6 Pistell - direct

was the purchase of that security made?

A We decided to take a position of 50,000 shares of a company called Newmark, which is listed on the Vancouver Exchange. We have paid so far approximately for all the proceeds for 14,000 shares. We are default on that payment of 14,000 shares and will be listed in default on the Toronto and Montreal Stock Exchange very -- as a matter of fact, we are past due now.

Q When to your knowledge was the settlement date for the balance of those shares?

A The settlement date I believe was approximately seven, eight days ago.

Q To your knowledge had a check been prepared to send to Canada in payment for the purchase of those securities on Monday, prior to the time the order of restraint was received?

A That is correct, sir.

Q Has that check been sent as a result of this order?

A No, we have not been able to send that check as a result of this order.

Q I would like to show you a report here described as Newmark Resources, Ltd., annual report, 1973, and ask you if that relates to the security purchased by Vencap?

247A

hprf 7 Pistell - direct

A Yes, it does.

MR. BROWN: If your Honor please, I would like to offer this in evidence.

THE COURT: Any objection?

THE WITNESS: In other words, Judge, we are in default on commitment to a member exchange because of this. And, naturally, it puts the company in bad reputation and very dire straits if we do not finish the commitment that we have made prior.

MR. ANDERSON: For the purpose for which this testimony is being received, your Honor, I have no objection.

THE WITNESS: Thank you.

(Defendants' Exhibit A received in evidence.)

THE COURT: What is the amount of this check?

MR. BROWN: Your Honor, I have it right here, in the checkbook stub.

Q Mr. Pistell, I want to show you a checkbook from Vencap, Ltd., and ask you if you can identify the checkbook?

A This is the checkbook of Vencap, Ltd.

Q Is that a check book which relates to an account maintained by Vencap in the regular course of

its business?

A Yes, it is.

Q Where does it maintain that account?

A I believe at the Bank of Commerce.

Q Would you turn in that checkbook, and can you tell from that book when a check was written in payment for the balance of the Newmark securities which you have described?

A I believe it says the 10th.

Q What is the sum, sir?

A The sum is 14,072.45.

Q To your knowledge, that check has not been sent?

A That is correct.

MR. BROWN: If your Honor please, may we request that this checkbook be deemed marked rather than having a mark put on it itself.

THE COURT: Yes.

(Defendants' Exhibit be deemed received in evidence.)

THE COURT: Do you have any objection?

MR. ANDERSON: No, your Honor.

Q Mr. Pistell, you mentioned before to his Honor as a result of default by Vencap in payment, there would be some kind of publication or something on the stock

exchange in Canaca.

A That is a standard rule when you are over the payment date you go on a notice list where a non member firm can take an order from there on. The same procedures as our stock exchange, the New York Stock Exchange.

Q Will there be publicity to your knowledge as a result of that?

A There will be, yes, I believe if it not already has been.

Q There will then be default by Vencap?

A That is correct.

Q Is that list of defaulting purchasers --

A To all firms.

Q Are there hundreds of member firms?

A Hundreds of member firms.

THE COURT: Is it a default in a technical sense, when it is because of a court order?

THE WITNESS: The order was given before the court order, Judge and it would be reneging on a trade.

THE COURT: You are not really reneging because the court won't let you.

THE WITNESS: The main thing about it is, we committed prior to the order, do you follow me, and your name would automatically go on the list no matter what

the circumstances would be.

MR. BROWN: The point is, your Honor, if I might just elaborate, that the damage to be done is not going to be significantly altered, by telling the brokerage firms or stock exchange, by saying the funds are prohibited to be released by court order. Mr. Pistell, I think, has testified it would make no difference but I would think it would be worse.

Q Mr. Pistell, in addition to that, can you tell us whether or not Vencap is intending to consummate a transaction with a Turkish wine monopoly?

A We obtained the Turkish wine monopoly for Vencap. We have had two men in Turkey, one a real top man on distributorship of wine.

Q What is his name?

A Mr. Frank McDonald and Mr. Jeff Kokdemir. They have been in touch with four or five of the largest distributors of wines in the United States. We have made probably one of the most advantageious deals in wine, costwise ever made. At the moment, we have indications for four to five hundred thousand cases of Turkish wine. Our total investment in this project so far has been about $39,000.

Q Are those funds that you describe as investment

251A

hprf 11 Pistell - direct

to pay for all of the necessary preliminary work in obtaining that deal or that concession?

A That is correct.

Q Is this a deal with a private company in Turkey or with the Government?

A This is with the government of Turkey.

Q Am I correct in understanding you that it is proposed that Vencap get a concession to import wine?

A Vencap has a 50 per cent interest in a company called Sangan, with the sole rights of importation for the Turkish wine monopoly.

Q That is a singed contract?

A Yes. At the present time every expense has been accounted for, every plane ticket with vouchers. At the present time there is about $6,700 more owed to these peopel. We received a telegram, that came by phone, and we will actually have the physical telegram today, the people are willing and ready to sign up on the concession and I would like to read to the Court the telegram even though it is only taken over the typewriter.

Q Would you describe to your Honor when that telegram was received and the name of the sender of the telegram, by name and position.

MR. ANDERSON: I object, your Honor, to what

is in effect the testimony by the author of that telegram by reading it into the record in this way.

THE COURT: I think your objection is technically very sound, Mr. Anderson. On the other hand, I would like to know what Mr. Pistell has in his mind.

Q Mr. Pistell, was that telegram received by you in the regular course of business of Vencap?

A That is correct.

Q And do you ordinarily and customarily send telegrams to representatives of Vencap as well as receive them?

A That is correct.

Q And do you know Mr. Kokdemir to be engaged by Vencap for this purpose?

A He is engaged for this purpose and a 50 per cent of Sangan and the one who received the concession. I may point out his brother-in-law is the Chief General of the Army of Turkey and probably the next Prime Minister of Turkey.

THE COURT: All right, Mr. Pistell --

MR. BROWN: Your Honor, there is an agreement between Mr. Pistell and the gentleman sending the telegram, a joint agreement, so any objection as to authenticity will be removed --

hprf 13 Pistell - direct

MR. ANDERSON: I'm sorry, I understand what Judge Stewart is ruling. I don't think this is a business venture as you are trying to establish but I think in terms of what Mr. Pistell has in his mind, I remove the objection to it if it is received on that basis.

THE WITNESS: Thank you, sir. It says:

"To R. C. Pistell, in care of Havens, Wandless, Stitt & Tighe, 99 Park, New York, New York:

"Desperately needs letter of credit on Sangan Incorporated. Firm orders of 500,000 cases wines Turk monopoly and Kavalidere Lone Start Texas, Munson Shaw Winn, Dixie Publix and Alabama. Imperative for meeting Chicago June 20th. Wire $6,653 -- Sangan Bank for expenses. Sample wines in bond customs Miami. H. J. Kokdemir."

We would not go ahead and order 500,000 cases of wine without having firm order. I would like to forward the gentlemen the expenses, we will get vouchers for every nickel of it. They have made two trips to Turkey and to arrange any letters of credit they need on back to back firm orders for the deal to be consummated.

Q As a matter of fact, Mr. Pistell, would it be accurate to state that Vencap has entered into agreements with Mr. Kokdemir [redacted] Sangan Inc. and also a pledge agreement concerning the same?

hprf 14 Pistell - direct

A That is correct.

Q I want to show you these three agreements and ask you whether or not you are familiar with them, and they are the agreements that you have indicated were entered into by Vencap with those individuals and that company.

A Yes, they are.

MR. BROWN: I would like to offer these in evidence.

MR. ANDERSON: In view of the nature of the testimony, your Honor, I would suggest we receive these and give me an opportunity to make any objections or comments later.

THE COURT: All right.

(Defendants' Exhibits C, D and E received in evidence.)

THE WITNESS: What I would like to do, if I may, because these fellows have traveled many thousands of miles and have very important meetings, and this is not a matter -- we get a voucher for every plane ticket, for every hotel and I would like to wire them their expenses that they have incurred so far, to get the firm orders and get this thing under way, so they can proceed with these dealerships to conclude our transactions.

Basically, there are hundreds of thousands of dollars at stake here.

hprf 15 Pistell - direct

MR. BROWN: If your Honor please, I would like to offer the copy of the telegram which was --

THE COURT: Is that the one that was just read?

MR. BROWN: Yes, your Honor.

THE COURT: All right.

(Defendants' Exhibit F received in evidence.)

Q Mr. Pistell, under this arrangement, with respect to the 500,000 cases of Turkish wine, was it the contemplation of Vencap to import those cases into the United States?

A It was the intent of the company that we own the 50 per cent of, which now I believe has its liquor law, tax license, et cetera, that would only be placed on orders that are back to back against firm orders with other distributors.

Q So it is clear that the importation of this wine into the United States was conditioned upon prior orders, as described by those various distributors, in the telegram you have read?

A That is correct, sir.

Q In terms of the financing of this transaction for the importation into the United States, of these cases of wine, how is that to be accomplished?

A Strictly on a back to back method with letters

hprf 16 Pistell - direct

of credit from banks.

Q As a result of this order, are you able to go out and get the letter of credit?

A No, I can't at the moment, and we are just hung up for the moment.

Q Mr. Pistell, would it be fair to state there is an agreement to buy these cases at a certain price and firm orders, to your knowledge, to purchase them by distributores in the United States?

A That is correct.

Q Subject to your obtaining the letter of credit to import them?

A That is correct.

Q Can you give us any idea as to the approximate purchase price of the cases of wine and your understanding of what the profit is going to be?

A I would rather not mention that in court here. I think it is possibly one of the advantageous deals ever done in this business and, basically, we are dealing with distributors and competitors and it might put us in a disadvantaged position but I would be more than happy to let the Court see that in private next week.

Q Would it be fair to say that these profits are in the six figures?

A I would say it would be very fair to say that the profits are in the six figures.

Q To your knowledge, if the letter of credit can't be lodged pursuant to the request contained in that telegram, what can happen to this transaction?

A We can lose the whole concession.

THE COURT: When do you have to have the letter of credit?

THE WITNESS: Well, the main thing, I would think--

THE COURT: Didn't I understand June 20th was the date?

THE WITNESS: I would say -- I didn't look at the telegram on that -- I do not know the expiration date by agreement. Everyone has taken so many files, I don't know what the agreement says. This is for a meeting for me to be in Chicago on the 20th. If I may refer to Mr. Taylor.

Mr. Taylor, do you know the expiration date of our concession? It was extended.

MR.TAYLOR: I believe it expires at the end of this month but I would have to check.

THE WITNESS: Thank you.

Q Mr. Pistell, can you tell me, has an arrangement been proposed between Vencap and an African country?

A Yes, there has been.

258A

Q Would you describe that for the Court, please?

A We retained probably one of the leading geologists of the world, for one of what could be one of the most lucrative concessions in the world for mining, who has just returned, and is presently in the hospital in Montreal and Dr. Tremblay, the advisor to the World Bank, and we have obtained a concession for gold, sapphires and diamonds on the preliminary aspects which could be one of the largest and most lucrative concessions in the world.

We have had a representative sitting in Africa for 45 days representing Vencap. I have had to have him return today, to the United States. He landed at 3:00 o'clock, Pan American Airways. I have a telex here from this country. The Minister of Mines has been waiting for me. Because of the various pressures that have been on me I have not been able to go.

I can say that the concessions of such magnitude that Vencap could not do it by itself. We would have to get a major mining company in with which we have already got preliminary discussions on. Dr. Tremblay spent $400. He is sitting in the hospital suffering from fever right now, in Montreal. He is one of the great leading world geologists that just gave the report to the World Bank on all of Thailand.

259A

hprf 19 Pistell - direct

I would like to have permission to send Dr. Tremblay his check, plus I have not been able to pay the expenses of our representatives in Africa. And, if something isn't done in a hurry, we will lose the concession.

Q Do I understand, Mr. Pistell, from your testimony, that there is proposed a venture whereby Vencap will be given a mining concession in an African country on a joint venture basis?

A On a joint venture basis, that is correct.

Q What is the name of that company, sir?

A I would rather, for certain reasons -- I'm very happy to turn over the report from Dr. Tremblay to the Judge and to you, but I would rather not say at the moment the name of the country for very, very many reasons, but the Court is perfectly welcome to read it.

THE COURT: Mr. Anderson, you started to rise.

MR. ANDERSON: I'm sorry. I meant to say that this disclosure had already been made in the affidavits.

THE WITNESS: I didn't know that was public.

Q Mr. Pistell, as a result of Dr. Tremblay's visit and undertaking, was a report prepared by him at your request?

A Yes, a complete report.

Q I would like to show you this document and ask

hprf 20 Pistell - direct

you whether or not that is a copy of the report prepared by Dr. Tremblay?

A This is the report of April 1974, of Dr. Tremblay.

MR. BROWN: If your Honor please, I would like to offer that report in evidence. The reason I do this, your Honor, I don't want to flood the Court with documents. I do want to show your Honor we are dealing in hard facts, matters of substance, real human problems, real substantive deals and not wild eyed schemes.

MR. ANDERSON: On the basis of the earlier documents, I have no objection.

THE WITNESS: Sir, may I ask you and you if I may have permission to pay Dr. Tremblay his fee.

THE COURT: Let's wait until we finished.

(Defendants' Exhibit G received in evidence.)

Q You indicated I think, in your affidavit, or some of the moving papers, papers in opposition we submitted, that this is a substantial, potential deal, and would represent a substantial potential profit to Vencap.

From your knowledge of having read the report, and your experience in mining, which I think you testified to before his Honor on prior occasion, would you say that would be accurate?

261A

A It could be one of the great concessions left in the world.

Q Mr. Pistell, with respect to this joint venture, is it important that Vencap come up with money to consummate this deal?

A It is important that we come up with money, but the deal is of such magnitude, the Government has offered to guarantee a two million dollar loan themselves, and go on the line, and they have offered to begin exploratory research with us but it is truthfully a deal of such magnitude, Vencap would have to get a major mining company in with it and obtain a share.

Q In addition to the money owed to Dr. Tremblay and to representatives, I think you have indicated, in Africa, do you have to travel any place and spend money in the near future in order to further along this transaction?

A I should have been in the Camaroons last week or the week before, to conclude and sign the deal and the concession. I have to travel all the time.

Q Do you feel that the timing on this is important and if so, would you tell his Honor why you feel it is a matter of urgency?

A I believe we have received a telex there over the past week, that it is an urgent matter, that I do get to the Camaroons.

262A

hprf 22 Pistell - direct

My business is a very odd business, it isn't a matter of selling in a tour of selling Chrysler and buying General Motors. It is a matter of personal contacts, who you know, and it is a matter of going in jungles; it is a matter of hard work and going places and seeing things and a great deal of personal contact.

Q Did you receive this telex recently?

A We received this telex, I believe, last week.

Q Who to your knowledge is the sender?

A Dr. Mase.

Q Is he the representative you described of Vencap?

A He is our representative for Vencap and other African nations at this time.

Q Would you read that telegram to the Court, please?

A I'm getting a little older. I will try to read it.

MR. BROWN: If your Honor would prefer, we can give it to your Honor to read.

THE COURT: Have you seen this, Mr. Anderson?

MR. BROWN: I am going to hand it to him, your Honor.

THE COURT: Off the record.

(Discussion off the record.)

MR. ANDERSON: Are you offering this?

MR. BROWN: Yes.

hprf 23 Pistell - direct

MR. ANDERSON: Yes, I think we should have this.

THE WITNESS: Incidentally, I had to recall him home.

MR. ANDERSON: Just so the record in this connection is clear, what date, if I may, your Honor, what date did you receive this telex?

THE WITNESS: That would be on the telex record of Havens, Wandless.

MR. ANDERSON: The date here appears to be June 5th.

THE WITNESS: That would probably be right.

MR. ANDERSON: That's approximately?

THE WITNESS: Yes.

MR. ANDERSON: He is responding to an earlier telex of yours of sometime in May.

THE WITNESS: Right. We have had telexes.

(Defendants' Exhibit H received in evidence.)

Q When you received that, at or about that time, did you do antying to make arrangements to get to the Camaroons and get this deal moving?

A We had been working with another attorney, Mr. Putzman, and Mr. Taylor and he had been working on a concession which had been agreed to and written up and

we decided to send Mr. Putzman there for a holding operation until I get over there. But in turn Mr. Taylor decided instead of that, we recall Dr. Mase to New York, to try and tell the minister over there that we were working on other arrangements with another major mining company at this time because of the magnitude of the deal.

Q Would it be fair to say as a result of this testimony, that prior to the receipt of the court order, restraining the operations of Vencap on June 10th, you had directed your attorneys and were working with them and Mr. Putzman on preparing a contract and had ordered Dr. Mase back to assist you on that?

A That is correct.

Q And you are not able to proceed with that now, is that right?

A I was supposed to be there two weeks ago or ten days ago.

Q You are not able to proceed with that because of the order?

A Right.

Q Mr. Pistell, in addition to that, did there come a time -- let me withdraw that. Does Vencap have an associated or affiliated company by the name of Intercapital Corporation?

hprf 26 Pistell - direct

THE WITNESS: Judge, I'm not going into the background because you have heard me before. Incidentally, gold closed at $160 an ounce today. I have 250 men working in Chivex today, we are mining gold and are producing. We are the third mine to be brought into Canada in ten years. I just hired as my president the ex-Deputy Minister of Mines, Mr. Douglas, for 13 years. This morning he telephoned and he heard he was going to be arrested and wanted to resign.

Yesterday the value of my stock fell over $3,250,000 --

THE COURT: Why was he going to be arrested?

THE WITNESS: These are rumors floating around because of the Dow Jones article. His family was calling him. Yesterday was a prime meeting with the banks, with Chivex finally financing in Canada and this vast article appeared on the Dow Jones. Everybody got Vencap and Chivex confused. The market equity value alone yesterday fell $3,000,000, over three and a half million dollars.

The banks walked out on our meeting, my management was ready to quit, and frankly, if I don't get my final financing in the next 30 days, it could be a disaster for my company. It could be a disaster for my people, merely because of the publicity of what has happened here.

I can't tell you the hurt that it has caused my staff, my people, the banks --

THE COURT: The fact is, that nothing has happened.

THE WITNESS: Judge, I agree but what happened is, confidence -- markets are built on confidence. We are negotiating a rights offering, sitting down with the underwritiers, and the major banks in Canada, they just walked out. 155,000 shares traded on the exchange yesterday, and it dropped from $1.70, whatever it was, to, I think thelow was $1.18. It just absolutely collapsed.

MR. BROWN: The point is, your Honor, the value of the option --

THE COURT: I understand.

THE WITNESS: What I am trying --

THE COURT: Let Mr. --

THE WITNESS: Whatever arguments, differences of opinion, we are all going --

THE COURT: Mr. Pistell, please. I will receive that document. Do you have anything else?

MR. BROWN: Yes, your Honor, I do. I have here a copy of the Dow Jones ticker from Canada and with the Court's permission may I read into the record the first paragraph of that?

268A

hprf 28 Pistell - direct

(Defendants' Exhibit I received in evidence.)

MR. BROWN: The title is"Promoter Pistell charged with using three million of IOS assets for self. Richard Pistell, a promoter was accused in federal court of using for his own enrichment three million dollars obtained from an IOS mutual fund that Robert Vesco, a fugitive financier once controlled," and it goes on, your Honor.

I think this has ahd a devastating --

THE COURT: Also on my family, my life and my wife and everything else.

MR. ANDERSON: No objection.

(Defendants' Exhibit J received in evidence.)

Q Mr. pistell, did there come a time that Vencap proposed to finance or acquire equity in Chivex Mining?

A There is a chance that if we do a rights offering, that Vencap will have the position or the opportunity to pick up the rights that are issued to Conservative Capital, or if there is a private placement, that Vencap will have the rights to participate in the private placement.

Q I think His honor may not understand all the things you are referring to. Who is Conservative

Capital.

THE COURT: I know who that is.

A He knows it very well.

Q For the record, you are an officer and stockholder in Chivex Mining, is that correct?

A That is correct.

Q And that is a Canadian company traded on the Stock Exchange there?

A That is correct.

Q Has Vencap, prior to June 10th, taken any steps to get involved in financing or purchasing stock in Chivex?

A It has received the options on Chivex stock, yes.

Q Did it go further than that and deposit any funds?

A Yes. It has deposited funds at the Royal Bank with an agreement if there is a rights offering it will receive Conservative Capital's rights and if there is a private placement it will receive its proportion of that.

Q What is the amount of the fund, sir?

A Approximately $700,000.

Q Is that the sole purpose for the use of those funds, to participate in a private financing of Chivex or in the alternative to have a pro rata right in the

rights offering issued to the stockholders?

A That is correct.

Q And as you have indicated, as a result of this suit, the market has fallen drastically in Chivex, is that correct?

A That is correct.

Q Mr. Pistell, can you tell us anything further about any publicity or other rumors that have come to your attention as a result of this action, and publicity that has grown from it or come about as a result which had had an effect on Vencap and its operations?

A Let me just say there have been so many rumors in the past two or three days, I don't want to go into all of them, but it has been a devastating effect on me, my family, my associates, my directors, and the whole thing.

MR. ANDERSON: Your Honor, I --

THE COURT: Who are the directors of Vencap?

THE WITNESS: Mr. Blackman and myself but I am talking about Chivex --

THE COURT: I mean Vencap.

THE WITNESS: Mr. Blackman, myself, Charley Murphy, and -- it's just the publicity, Judge, and --

THE COURT: Yes.

MR. ANDERSON: I was going to move to strike

the testimony of the impact on the witness and his family. I think that --

THE WITNESS: I'm not going to strike it when my wife is at the doctor this afternoon.

THE COURT: All right, Mr. Pistell, please. I will let it stand, Mr. Anderson.

MR. BROWN: If your Honor please, I think the Court has heard of the involvement of Vencaps in terms of participating in the development of Chivex and I want to bring out a point for the Court.

Q Who is the president of Chivex, sir?

A The president is Mr. Donald Douglas, former Deputy Minister of Mines of Ontario.

Q Have you spoken to him within the last few days?

A He called at 9:00 o'clock this morning.

Q What did he say to you, sir?

A He was getting calls that he was immediately going to jail.

Q And as a result of that, what did he say to you?

A He said he thought he might resign.

Q Are you able to tell the Court what effect, if any, that will have on the Chivex mining operation and

hprf 32 Pistell - direct

potential investment in Chivex by Vencap?

MR. ANDERSON: Your Honor --

THE COURT: I don't think we have to go into that. I understand.

MR. BROWN: Your Honor, I would also like to offer a copy of an article from the Wall Street Journal, further publicity on this matter.

MR. ANDERSON: No objection.

THE COURT: All right.

(Defendants' Exhibit K received in evidence.)

xx

BY MR. BROWN:

Q Mr. Pistell, as a result of this order are you able, to your knowledge, to conduct the business operation of Vencap with any of the subsidiaries?

A No, sir.

Q Are you able to assist in consummation of any of the transactions we have discussed?

A No, sir.

Q Has, to your knowledge, the publicity and rumors you have testified about, had a substantiallly adverse effect on the company?

A Yes, sir.

MR. BROWN: I have no further questions, your

Honor.

CROSS EXAMINATION

BY MR. ANDERSON:

Q Mr. Pistell, I believe I recall your testimony that the investment decisions in Vencap are made by the board, ultimate decisions, is that correct?

A I would say so, yes. I would say I am the prime motivator and prime mover.

Q You recommend and the board either adopts or rejects your recommendation, is that correct?

A That is right.

Q And the board members are Messrs. Murphy, Taylor, Blackman --

A Mr. Blackman, myself, Mr. Lawson.

Q Have you testified earlier that Mr. Murphy and Mr. Taylor were directors --

A No, but they are very good sounding boards for me. If I take a look at a deal I listen to their advice.

Q Basically, you don't go into deals unless you have past them off to them; is that correct?

A I don't go into any deals unless I look at it legally, the laws are right and the contracts are right, et cetera.

hprf 34 Pistell - cross

Q Mr. Taylor has given me two folders which contain the meetings of the stockholders and directors of Vencap. Do you recognize those as corporate records of your company?

A I believe they are, I have signed them, yes.

MR. ANDERSON: Could we have these marked, please.

THE COURT: What are we getting into here?

MR. ANDERSON: There is no approval for any of these transactions about which we have just heard, your Honor. There is not a word in the corporate records here about Newmark, Sangan, any Cameroon sessions --

THE WITNESS: I believe we have written agreements on all those, sir.

MR. ANDERSON: -- and any Intercapital rights.

MR. BROWN: If your Honor please --

THE COURT: I think what I would like to do at the moment is to take a short recess. May I see you, Mr. Anderson and Mr. Brown in the robing room?

(Recess.)

(Plaintiffs' Exhibits 10 and 11 marked for identification.)

xx

MR. OMAR: Your Honor, as a result of the testimony of Mr. Pistell, Mr. Anderson and I join in moving that the temporary restraining order presently in effect be

hprf 35 Pistell - cross

relaxed to the extent that Vencap could issue checks in payment of certain specified amounts to which Mr. Pistell referred. I speak specifically of a check in the amount of $14,072.45, to Midland Dougherty, in payment for shares of Newmark, committed to be purchased by Vencap, the second check to Mousseau Tremblay, in the amount of $7,272.74, for expenses incurred by him.

The third check to Dr. Mase in the amount of $5,000, again for expenses and a fourth check to Sangan, Inc. in the amount of $6,653 for expenses of the Vencap representative.

That, your Honor, is an amount in the aggregate of $33,998.19. We understand that on Monday morning we would supply your Honor with confirmation with respect to the purchase of the stock and any other bills which aggregate the amounts that we talked about here.

We understand further --

THE COURT: I would think, if you have bills or something of that sort but an affidavit would satisfy me.

MR. ORAM: In all other respects we understand the temporary restraining order would remain in effect.

THE COURT: Yes. That seems to be a reasonable program.

MR. ANDERSON: Your Honor, my only comment would

be, in effect consenting to the modification I am not conceding that these payments are proper otherwise.

THE COURT: I understand that.

MR. ORAM: The only other thing, your Honor, is I would advise the Court that Mr. Pistell and Vencap propose to issue in Canada a press release to clarify the situation and to give a factual statement of the nature and the state of these proceedings as they now exist. Mr. Pistell feels strongly it is necessary to counteract rumors and whatnot to which he testified.

I don't believe that in any way involves the temporary restraining order but I do want to advise your Honor that is the plan.

THE COURT: All right, gentlemen, let's adjourn at this time until 10:00 o'clock, Monday morning. We will proceed as expeditiously as we can at that time.

(Adjourned 3:20 p.m.)
(Adjourned to June 17, 1974.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Bruno Lederer	9	20	28	31
John Andrew Rouse	32	43		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
1		9
2	10	18
3	11	18
4	11	18
5	12	18
6	33	37
7	33	39
8	34	42
9	34	42
10	93	
11	93	
Defendants		
A		66
B (deemed)		67
C,D,E,		73
F		74
G		79
H		82
I,J		87
K		91

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IIT, an International Investment Trust, and GEORGES BADEN, JACQUES DELVAUX and ERNEST LECUIT, as Liquidators for IIT, an International Investment Trust,

Plaintiffs,

-against-

74 Civ. 2504

VENCAP, LTD., INTERVENT, INC., INTERCAPITAL, N.V., RICHARD C. PISTELL, WALTER BLACKMAN, ROBERT L. VESCO, MILTON F. MEISSNER, NORMAN LEBLANC, STANLEY GRAZE, CHARLES E. MURPHY, JR., DAVID TAYLOR and HAVENS, WANDLESS, STITT & TIGHE,

Defendants.

New York, New York
June 17, 1974 10:00 a.m.

(Hearing continued)

MR. ANDERSON: Good morning, your Honor.

Your Honor, at this time the plaintiff would like to offer Exhibit 10 which is the minutes of the stockholder's proceeding of Vencap which were provided to us by the defense counsel.

MR. ORAM: What date is that?

MR. ANDERSON: That was furnished to us --

MR. ORAM: The date of the minutes that are offering.

MR. ANDERSON: It is the entire proceedings of stockholders of Vencap.

MR. ORAM: No objection.

If it is the record of the stockholder's meeting of Vencap, I have no objection.

MR. ANDERSON: Well, substitute Xerox copies, then.

(Plaintiffs' Exhibit 10 received in evidence.)

MR. ANDERSON: We offer Plaintiffs' Exhibit 11, the Vencap directors' minutes.

THE COURT: What did you say 11 was?

Would you look at it again, Mr. Anderson?

MR. ANDERSON: Exhibit 11 are the Vencap directors' minutes which we offer.

THE COURT: 10 I take it is the certificate of incorporation, in effect, and what else?

MR. ANDERSON: Articles of association or in effect, the bylaws, certificates as to the officers, directors and the ownership of the stock.

MR. ORAM: No objection.

(Plaintiffs' Exhibit 11 received in evidence.)

THE COURT: All right, Mr. Anderson.

MR. ANDERSON: Your Honor, we have prepared a schedule of the remaining exhibits to be offered.

THE COURT: I have a copy of it.

MR. ANDERSON: Exhibit 12, your Honor, is the transcript of the hearing in 72 Civ. 5001. We have given Mr. Oram a designation of the portions of that on which we will primarily rely and a copy of that designation together with the order we discussed Friday was supposed to be here this morning but has inadvertently not found its way to the courthouse, but I will give you a copy when it arrives.

THE COURT: What do the numbers mean? I see 12, then 12-259, the first meeting of incorporation of Vencap.

MR. ANDERSON: That is an exhibit number from the prior hearing.

THE COURT: 259 is the exhibit?

MR.ANDERSON: That is correct. The designation here 12 --

THE COURT: The designation as to 12?

MR. ANDERSON: That is correct. Instead of doing these A,B,C, since they all relate to this testimony, we thought if we put 12 as the transcript, 259, 260, et-cetera as the exhibit would help to keep us straight.

At this time I would like to offer Exhibit 12 through Exhibit 2301.

MR. ORAM: Your Honor, I take it that Exhibit 12 is ocvered by our stipulation, is it, Mr. Anderson?

MR. ANDERSON: It is.

MR. ORAM: I have no idea whether there is any objection I could or should make with respect to any of the exhibits. I received this list five minutes ago. I must therefore object at least on the grounds of relevance. I have no idea what these relate to or what the purpose of this offer is.

MR. ANDERSON: Your Honor, while the list was handed over five minutes ago, the stipulation refers to the testimony at the hearing and the documents introduced during that hearing, so there is certainly no element of surprise here.

The relevance is, the testimony and the exhibits relate to the establishing and financing of the defendant Vencap by the defendant Mr. Pistell and Mr. Pistell's associated companies, Intervent and Intercapital, which are also defendants.

MR. ORAM: I stand corrected. I don't mean to suggest, Mr. Anderson, there was any surprise in the exhibits. The mere fact is, I have just now received

the list and I have obviously not the time since last Monday evening when this was filed had an opportunity to study each one. I still don't know what the relevance in this proceeding is to these documents and I therefore do make a blanket objection to them.

THE COURT: The stipulation, if I am looking at the right stipulation, says this is a stipulation of -- well, it is dated June 13th. I think it was signed by me on Friday, wasn't it?

MR. ANDERSON: Yes, your Honor.

THE COURT: The stipulation says subject to all proper objection at the time of their introduction, copies of the exhibits introduced in Mr. Pistell's testimony in the SEC case may be introduced in lieu of the originals and without authorization and in substance, the same thing with respect to documents provided by the SEC with respect to Mr. Pistell's deposition.

The stipulation, I take it, does not cover the question of relevance.

MR. ANDERSON: That is definitely true, your Honor. Mr. Oram reserved rights with respect to relevance.

THE COURT: How do we deal with the question then?

MR. ANDERSON: Your Honor, I will submit to you

in total this testimony together with the testimony which we will offer as Exhibit 14 and associated exhibits show that without going into the details basically the facts that were set forth in my affidavit in support of the temporary restraining order, that is, a loan of funds from Vencap indirectly in the amount of $590,000 to pay his personal federal, New York State and other taxes --

THE COURT: Mr. Anderson, I assume -- well, I not only assume, I accept the notion that these things are all relevant, but Mr. Oram hasn't had a chance to review these documents nor the testimony and my question really is, when I say how do we deal with them, what is the best procedure?

Is Mr. Oram entitled to view the documents and designated portions of the testimony?

MR. ANDERSON: In view of the time exigencies, may I suggest that the documents and exhibits be received subject to any time period that your Honor wishes to set for Mr. Oram to make objections as to relevancy?

MR. ORAM: Your Honor, I will suggest we will make every effort and will in fact review the testimony and the exhibits this evening.

Perhaps we could shorten the procedure and there may be documents as to which we have no objection at all.

If that is the case, we will, of course, withdraw the objection. Rather than receiving them subject, I would prefer to have an opportunity to review them in light of the testimony in connection with which they are offered and see if we can narrow any objections we might have within some reasonable limits.

THE COURT: The only question I would have about that, do you expect to be offering testimony today, Mr. Anderson, which will relate to any of these documents?

MR. ANDERSON: Yes, very definitely.

MR. ORAM: Perhaps that is the time we will be compelled to deal with them.

THE COURT: Why don't we do this. Let's take them subject to your objection, Mr. Oram, and I take it either today during the course of testimony or tomorrow, you will be able to specify your objections.

Mr. Anderson, it seems to me we should also proceed on the basis that if you offer testimony related to one of these documents and it later turns out that the testimony is inadmissible, I suppose the document at least to that extent would be also.

Let's proceed on the basis that we will receive 12-259 through 12-301, not in consecutive order, subject to Mr. Oram's continuing right to object on the

basis of relevance.

MR. ANDERSON: Would it be acceptable if we had the clerk mark those during a break?

THE COURT: Yes.

MR. ANDERSON: They have already been marked for identification.

On the same basis, we offer Exhibit 13.

MR. ORAM: Perhaps we could handle all of the exhibits on the list exactly the same way.

THE COURT: Fine.

I take it what you are doing is offering everything on this list and I will receive everything subject to the proviso which I have just indicated and I will ask the clerk to mark these as in evidence at the first break.

MR. ANDERSON: Your Honor, I may have misspoken. What I meant was that later testimony will depend upon the facts stated in these. There will not be independent testimony establishing these documents. This is a necessary foundation.

THE COURT: I think I understand you.

MR. ANDERSON: Your Honor, plaintiff calls Mr. Jacques Delvaux.

J A C Q U E S D E L V A U X, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Delvaux, what is your residence address?

A Luxembourg, 9 Avenue of Liberty.

Q What is your profession?

A I am a lawyer in Luxembourg.

Q Are you one of the liquidators of the IIT Fund?

A I am.

Q Mr. Delvaux, I show you Plaintiffs' Exhibit 1 which is the order of the Luxembourg court. That has been admitted in evidence in this proceeding. I would ask you, are you one of the three liquidators described in the order of the Luxembourg court?

A Yes, I am.

Q Mr. Delvaux, Plaintiffs' Exhibit 1 recites that the three liquidators were to take an oath to fulfill their functions properly and faithfully before a Magistrate.

In that connection, could you tell us what happened?

A We did that oath before court.

Q Who is "we"?

A The three liquidators.

Q And the other two liquidators are by name?

A Mr. George Baden and Ernest Lecuit.

Q Did you take the oath separately or together?

A We take them separately but at the same time before court. One after the other has been swearing to accomplish its function to as best possible.

Q And you were present during that oath?

A Correct. I can provide also the Court with an exstract of those minutes that has been taken by the Registrar of our court at the moment we did that swearing. I have already given the orders to that a copy will be handed over to the Court translated into English and legalized in the usual form.

Q Mr. Delvaux, the lawsuit which is before Judge Stewart today involves IIT and the liquidators against Vencap, certain other companies, Mr. Pistell and other individuals and firms.

Did the liquidators authorize me to commence that lawsuit?

A We did authorize you and we shall reconfirm it once again by writing.

MR. ANDERSON: No further questions.

CROSS EXAMINATION

BY MR. ORAM:

Q Mr. Delvaux, did you read the complaint in this case before it was filed?

A No, I read it yesterday.

Q For the first time.

You did not read it before it was filed, is that what I understood?

A That is correct.

Q What was your authorization to Mr. Anderson?

A Because we are not specialists in American law, we gave full authority to Mr. Anderson to handle our matter and to defend the interests of the liquidation in the United States.

Q Did you discuss the complaint or the parties to be included in the complaint before it was filed?

MR. ANDERSON: Your Honor, I am going to object to this on the grounds of attorney-client privilege.

MR. ORAM: Your Honor knows our feelings as to the fact that our law firm was named as well as two of my partners and I think the individual who purportedly authorized the filing of the complaint is now on the stand.

I would like to find out from him, if I could, how it came about our firm was named.

THE COURT: The way you put it, Mr. Oram, it sounds as though it is only a matter of curiosity. I am sure that is not the case.

MR. ORAM: It is not the case.

THE COURT: I have been wondering, however, whether the attorney-client privilege with respect to this authorization hasn't been waived by your questions, Mr. Anderson.

MR. ANDERSON: Your Honor, I think that Mr. Oram raised a question at Friday's hearing as to whether or not this lawsuit had been authorized and I think without going into what was the basis with respect to any particular defendant or party here or what were the discussions between ourselves and the liquidators prior to that, I don't think that is waived by asking whether or not our act had been, indeed, endorsed.

However, your Honor, I don't see that at this preliminary hearing where the question is the stopping of the drain on the Vencap assets where the request for preliminary relief does not apply to Mr. Oram, to partners or to his law firm that there is any relevancy to the factors which either did or did not go into the naming of those individuals.

MR. ORAM: Your Honor, I am very sensitive to attorney-client privilege in this matter as is obvious. I don't, therefore, want to press the matter if Mr. Anderson is telling me that is the issue upon which he

is relying.

It would suffice if Mr. Anderson agrees on the record that the naming of my law firm and my two partners was a result of his decision and not the liquidators'.

MR. ANDERSON: Your Honor, the principal grounds for the objection here, the basis for naming the two lawyers and the law firms is irrelevant to the present proceedings.

In signing a complaint, I took the responsibility under Rule 11 and I accept that responsibility today.

THE COURT: What was the last question we have been discussing?

(Read.)

THE COURT: I will sustain the objection to that question, Mr. Oram. However, I think you are entitled to ask Mr. Delvaux what he did and why he did it.

MR. ORAM: We will take it from that point of view, your Honor.

BY MR. ORAM:

Q What did you do, Mr. Delvaux, in connection with the preparation of this lawsuit?

A We gave the demand to Mr. Anderson to do the best possible as I have told before, to do the best possible in order to defend in this case the interests of the IIT liquidation.

We found, I am talking about the liquidators, the liquidators found that being not informed about U. S. procedures, our U. S. counsel had to take all necessary steps that he found as being useful in order to defend the interests of IIT.

Q Have you, as liquidator of IIT, commenced any other proceedings in the United States?

A For the moment -- you see, I am for the moment because there are so many, is all over the world, we have divided, the three liquidators have divided their functions. My function for the moment is to look after the part, the liability side, for the moment, that is, to find out, to make the arrangements that are necessary in order to set up all the records concerning the liquidator, but for the moment there is a suit entered against us by the AMBT, American International Bank & Trust and there also we will have to defend the interest of IIT.

Q In preparation for the filing of this lawsuit, Mr. Delvaux, did you have occasion to discuss the matter with the SEC?

A With the SEC?

Q The Securities and Exchange Commission.

A I had no discussion. I remember no discussion with the Securities and Exchange Commission concerning

this specific case. I ought to examine -- I was once here in New York -- when was that, I don't know any more --

Q I am sorry, I am not sure I got the answer.

You did have a discussion with the SEC in New York, you say?

A We had some discussions with the Securities and Exchange Commission here in New York and I am not absolutely sure that that was specifically about this matter, so I am very cross because for the moment I am here telling something under oath that I ought to examine now exactly if we have talked about that specific matter here in New York with the Securities and Exchange Commission.

You understand we have very many affairs. We have been talking with the Securities and Exchange Commission because we find it essential that the Securities and Exchange Commission assists the liquidation. I have to find out if in this specific matter we had a talk with the Securities and Exchange Commission.

Q I understand.

A I have to find that out. I can't give you now a specific answer.

Q Do you have documents or records available to you here that would let you answer that question?

A Here in New York I have no documents. I

myself have got no documents, but I have to see again the telex or the orders that have been sent over to Mr. Anderson in order to look if we had a talk concerning that matter with the Securities and Exchange Commission. I have to review all those documents, but I am at your disposal to look at all the documents we have in that matter but it seems not to me that there are very many documents that have been issued in that light.

MR. ORAM: Mr. Anderson, do you think you could assist the witness?

MR. ANDERSON: If whether or not there are documents? Or whether or not there were discussions with the SEC?

MR. ORAM: That is correct.

THE WITNESS: It seems to my opinion the only discussion we had in that matter, if I remember well, that was downstairs for two minutes or three minutes with Mr. Jacob.

MR. ANDERSON: There certainly have been discussions with the SEC about this Vencap IIT involvement.

MR. ORAM: I am asking -- I thought the witness had said that some telex that came to you will assist him in recalling whether or not he discussed this matter with the SEC.

MR. ANDERSON: I don't know whether he discussed this matter with the SEC.

THE COURT: I think you said you had a two or three minute discussion with Mr. Jacob, is that right?

THE WITNESS: Together with Mr. Anderson. That is the only thing that we discussed with the SEC in this matter. I will apologize because I have to remember there are so many things in this matter involved I have to do all my efforts to recollect that.

THE COURT: Why don't we go ahead, Mr. Oram. The witness has told us he thinks he recalls a two or three minute discussion with Mr. Jacob. Why don't we go ahead on that basis and if we need to come back to it, of course, we can.

Q I think you testified, Mr. Delvaux, you were looking to the SEC to assist you in the liquidation. I wonder if you could explain that, the liquidation of IIT?

A That is very simple. The SEC has made an investigation concerning the whole matter of the IOS and we certainly are not, for the moment, not in a position to know everything, so we request, or we seek the assistance of all the authorities that can help us, and I think that if the Luxembourg liquidators would not ask the assistance of the other authorities in order to assist

them to do the liquidation, we could not execute in a proper way our liquidation.

Q Has the assistance of the SEC been given to you?

A Beg pardon? We have asked this question and that question. Some information, but I don't know if that is relevant in this case.

Q Your counsel will take care of that question, Mr. Delvaux. I just asked you if the SEC has assisted you?

A Certainly.

Q The answer is "Yes."

A Yes.

MR. ORAM: I think that is all.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Delvaux, have the authorities of any other country assisted the liquidators?

A There is formed an international committee, that is, the authorities of all the countries that are supervising, the authorities of all countries where the IOS had done some activity. They have formed a committee and the liquidators report each three months or at some definite period report to that committee what has been done until now, and they request from those authorities the necessary help in the

Q What is your educational background?

A I have a Bachelor of Science Degree from Notre Dam University in Engineering Science and Master of Business Administration from Stanford University.

Q Would you recount for the Court your employment situation after graduation from graduate school?

A After graduation I joined the investment banking firm of Laird, Inc., where I worked from 1969 through September of 1973 in the capacity as a member of the Corporate Department specializing in Laird's investment banking activities and more particularly in their corporate development program.

Q Why did you leave Laird?

A I left Laird to found my own business in the financial consulting area and that business I call Bedford Financial Company.

Q What specifically do you do at Bedford Financial?

A We provide financial consulting services to corporations.

Q Are you generally familiar with the field of management of money, venture capital funds, mutual funds, things of that nature?

A Yes. During specially my involvement at Laird, I was frequently involved in the raising of capital to

finance the various, some of the various ventures that Laird was involved in. That ranged anywhere from bank financing at one end of the spectrum to the venture capital equity investments at the other end.

MR. MORSE: Your Honor, I tender Mr. Donovan as an expert witness in investment banking.

MR. ORAM: Your Honor, I am not sure -- perhaps my objection could wait for an offer of proof. I don't know what this witness is to testify to. Why do we need an expert on investment banking to begin with.

MR. MORSE: This witness will testify as to the reasonableness or nonreasonableness of the compensation paid to Mr. Pistell as manager of the Vencap Venture Fund and I guess, for want of a better word, the legitimacy of the transaction where ITT purported to invest in Vencap.

MR. ORAM: I don't think there is anywhere in the complaint or other papers, any statement that Mr. Pistell is managing agent for Venture Fund, whatever that is, nor do I have the testimony so far, and I object to this witness' testimony with respect to Mr. Pistell's activities.

THE COURT: I think I will overrule the objection at this point, Mr. Oram. You can renew the objection later on in light of his testimony, if you wish to do so.

BY MR. MORSE:

Q I hand you Plaintiffs' Exhibit 14-9, which is a letter from Mr. Glavin of the Havens, Wandless firm to the SEC, containing exhibits listing Vencap's stock transactions and statement of where its cash is.

I hand you 14-29A, which is an employment agreement.

MR. ORAM: Would you give me a moment to get these out?

THE COURT: What else?

MR. MORSE: 12-261, the minutes of an

extraordinary meeting of the members of Vencap.

Exhibit 12-262, a letter agreement between Vencap and IIT Management Company on behalf of IIT, dated September 29, 1972, and Exhibit 12-278, which is a three-page memorandum prepared apparently by Vencap, attention, Stanley Glaze.

MR. ORAM: These are all exhibits annexed to your affidavit, Mr. Anderson, is that correct? It makes it easier for me to find them.

MR. ANDERSON: I don't have them keyed that way. They should be basically that group.

MR. ORAM: If I run into trouble, I will let you know.

Q Mr. Donovan, have you had an opportunity to review the exhibits I just handed you prior to this morning?

A Yes.

Q Are you familiar with financial offerings involving redeemable preferred or preference shares?

A Yes. Many if not all of the corporate development investments which Laird, Inc., sponsored were structured with a convertible preferred security in addition to a common equity security.

Q Can you name for the Court some of these offerings?

A General Housewares Corporation, Keane Corporation,

General Recreation.

Q The letter of September 29, 1972, which is Plaintiffs' Exhibit 12-262, purports to set forth the capital structure of Vencap.

What is that capital structure as set forth?

A 30,000 shares of the redeemable preference shares, the issuance of warrants for an additional 30,000 shares and 10,000 common shares of which -- 10,000 common shares.

THE COURT: Which exhibit number is that?

MR. MORSE: 12-262, your Honor.

Q In other words, Vencap started with a capital slightly in excess of $3 million as that exhibit would describe it?

A In terms of the capital contribution, yes. The total capitalization of Vencap was heavily weighted in favor of the preferred or preference shares.

Q Looking at the resolution of August 31, 1972, which is Exhibit 12-261, what are the rights of the redeemable preference shares as set forth?

MR. ORAM: Your Honor, I think these documents speak for themselves, do they not?

THE COURT: I suppose so, Mr. Oram. I think it will help me, however, to have it spelled out hopefully in a way which is not inconsistent with what the document says.

12-261 is a letter dated September 29, 1972, is that right?

MR. MORSE: I thought that was Exhibit 12-262, and the minutes of shareholders meeting was 12-261.

MR. ORAM: Would you be good enough to hold up for a minute. I haven't found your last exhibit.

THE COURT: May I see the documents we are dealing with now so I know I have the right ones in front of me.

A To run down the list, starting on page 2 and in a winding up, it specifies that the capital that came in as a result of the purchase of the preference shares would take a priority over the common.

It further limits that recovery in the case of the winding up to justify the $3 million which was the purchase price of those preference shares.

In terms of participation in the profitability of Vencap to the extent that there is profitability, there were several dividend provisions, the first of which provided that 6 percent of profits on an annual basis would be paid to the holders of the preference shares if declared by the company and if earned by the company.

Continuing on, there is a further dividend described which is a participation of one-third of residual

earnings as defined in this agreement that would further be distributed each year to the holders of the preference shares to the extent those earnings were earned and, secondly, if declared for distribution by the company.

Those residual earnings would be the earnings after adjustments for the 6 percent dividend, plus interest dividends or distributions to other holders or classes of shares that would have priority over the preference shares, and there were none at the initial capitalization of the company.

And it further talks about all amounts charged against the income of Vencap which would include operating fees and expenses of Vencap as well as, I believe, a portion, if not all of the compensation to Mr. Pistell.

In the fifth provision, there is a redemption clause which specifies that Vencap by the payment of $3 million back to the investors in the preference shares, plus a 6 percent dividend, can at any time redeem these preference shares.

This would be specifically in lieu of any additional distributions, namely, the one-third participation in residual profits that were specified above, so if the company, Vencap, had substantial earnings, it would then be enabled, or it would then be able to redeem the preferred

stock at $3 million, plus the 6 percent.

Q In other words, if Vencap became extremely profitable, the holders of the common stock could buy out the preferred stock for the $3 million, plus 6 percent?

A That is correct. In other words, there is a restriction on the maximum participation that the preference shares would have in the profitability, if any, of Vencap but there are no restrictions in the participation and the losses to the extent that losses are incurred.

Continuing on down the list, in item No. 6, it talks about voting provisions and it basically prohibits the holders of the preference shares to vote only on certain specified events and those specified events would be winding up the issuance of additional preference shares which would be senior in standing to these other shares.

Q In other words, is there any way for the preferred shareholders to unlock payment to themselves if the manager of the fund didn't feel like paying them?

A I think you are now getting into the area of what control would the holders of the preference shares have over the Vencap operation.

It may be worthwhile for the Court to comment in the way of how these kinds of agreements may normally be adopted to compare and contrast this agreement to that.

Q Yes, I would appreciate your doing that.

A Basically you may envision that when an individual or individuals who are intending to manage money, to put those moneys into various investments, and are seeking capital, they will go forth to sources to raise that capital.

A normal control provision is generally insisted upon in the way of the outside investors by some limitation on the total time or duration that, let's call it the venture or entity will exist.

There would further be controls in terms of a likely specification of fees and/or compensation to the management of the money and certainly a specification as to the percentage of participation that the investors of the majority of the capital would receive in turn for -- would receive out of the profitability of the company.

My experience would indicate that it is normally the case that in such transactions as these that in addition to a specified period of time and some limitation on fees and expenses, that there is also a very specific determination of the distribution of the assets, and/or the profitability of the company to its various shareholders.

To be more specific, I think in the United States when you are talking about, let's say, venture capital

management, or let's call it corporate development management or investment management where there is a high degree of specialization, that usually will provide that the compensation to these individuals, or individual who is managing this money will be fairly high on the spectrum of total fees and/or compensation.

You might envision the money management world as divided into several factions. At the low end of the spectrum would be the banking management of common stock portfolios and what have you. There, typically, you will find fees of a half to three-quarters of 1 percent of the market value of the money managed.

Q When you say fees, do you mean just fees or fees and expenses also?

A These are the management fees which would cover the operating expenses of the management company.

MR. ORAM: Your Honor, I think I must object at this point.

We are now talking about bank management of funds. I have no idea what relevance this has to this proceeding. I don't think Mr. Pistell or Vencap or anybody else has ever represented or held themselves out to be managing funds as a bank does.

THE COURT: I take it this is just an example, Mr.

Oram. He started out by saying this is one end of the spectrum. We are going to hear about other stops along the way, I suspect.

Is this what you are doing?

MR. MORSE: Yes, your Honor.

Q Would you continue?

A That might be the low end of the spectrum. At the high end would be the venture management kinds of activities which are highly specialized, require more experience in compensation and, therefore, fees and expenses are proportionately higher.

Normally, there will be a specified percentage which would go to the management company in the way of a fee a management fee, to cover the operating fees and expenses of the management company.

Additionally, there would be a specified provision in the way of participation in the profitability of that venture by both the management and the investor.

Typically, to put some numbers on this, you might say the range, which is unlike the banks, which is less than 1 percent, here you can oftentimes find the straight management fee up to the 5 percent level, although the average is normally 2 to 3 percent and the participation on the part of the management company is generally in a range

of 10 to 25 percent, more closely grouped around the 15 to 20 percent of profitability.

Additionally, I would say it is normally the case that rather than specifying distributions out of reported profits, that a more normal procedure would be out of realized profits.

Q Does Vencap purport to give distribution out of reported profits?

A As I read it, the auditor would determine the net income as well as the residual earnings of Vencap and that would be binding upon both the management and the investors in the way of determining distributions, if any, that the holders of the preference shares might be entitled to if Vencap decided to declare those distributions.

THE COURT: What is the difference between realized and reported?

THE WITNESS: I think, your Honor, the way to draw that distinction, if you own a security, let's say particularly in a privately held company or in a company where there might be limited marketability, it is usually a determination of the board of directors as to how to value that particular security.

There is a high degree of discretion in terms of how this valuation might be arrived at and a high degree of

discretion can, of course, lead to differences of opinion as to what this valuation might be.

The way that it is oftentimes dealt with, the investor would say, we are not going to put you in a position where you are going to be making that determination. We are going to look at realized gains, namely, what have we gotten out in cash on an investment. We made a cash investment, what has come back to us in the way of cash for this investment.

Normally you might envision that the securities, whatever they were that were purchased would be sold. Your cost versus your selling price determines your profit or your loss and when you accumulate those together, you will have the realized profit or loss of the company.

If you get into the very discretionary area of determining earnings, in many cases or quite likely in most cases, you would find that specially in a continuing business, that there will be a high proportion of the assets that are in these investments that are subject to discretion in the way of how they should be valued, so it is very hard to determine what the actual value would be and that is why I think that the normal tendency is to lean more heavily towards the realized profits.

Q If the preferred shareholders have a maximum of

33-1/3 percent of the residual earnings when and if declared, that by arithmetic would leave 67-2/3 percent of the residual earnings of the common stock.

Would you state whether as a general rule, in your experience, a 67-2/3 percent interest of residual earnings is high, average, medium, what have you?

A I would answer that question in two ways. I think you are talking about a very specialized kind of activity whenever you are structuring the participation and profitability. I have my own ideas as to what those may be through association with people who are in, let's say, the profession of managing venturesome activities.

To validate or invalidate my own impressions, I also contacted some others I knew of in the business to ask them either the specific transaction they had structured for their management companies and/or others that they were knowledgeable of.

In general, I would say that I received comments which were quite supportive of my own view point, which was, in the way of a normal participation for management in this kind of an activity that a 10 to 20 percent --

MR. ORAM: If your Honor please, I think what the witness is now testifying to is clearly hearsay. He has testified he talked to some other people who told him that.

I think we are at least entitled to his own opinion.

THE COURT: As I understand it, he is telling us this is his own view and it was supported by the views of others.

Since we are still, at least at this point, in the area of expert testimony, I will overrule the objection.

A So the 10 to 20 percent, let's say grouping is a normal one. In terms of variations from that, you may find a lower percentage of participation if there are larger dollar amounts being involved and you may in certain instances find a higher participation to management.

I am aware of personally two cases where they have gone as high as 25 percent of realized gains and none that have exceeded that.

Additionally, I think it may be worthwhile to comment whether it makes economic sense in the way of being able to support management of such an activity with, say, a $3 million or $10,000 capitalization.

If you intend to run that entity as an independent entity, which is what Vencap was, it is clear that with the fees and expenses that those can start to quickly add up to more than 2 to 3 percent which is where the normal grouping would be.

On that basis, I would say that it is unusual to

find venture funds or specialized capital management that is set up with such a limited pot of capital. They normally go to a larger capital base within the percentage restrictions that they can support the management.

For that reason, I think it may be questionable as to whether there was the right kind of diligence applied in the way of does it even make sense to induce investors --

MR. ORAM: I object to this testimony. This is conclusions of law.

THE COURT: I will sustain the objection as to what the witness thinks is questionable.

Mr. Donovan, you lost me there for a moment. You had been talking about 10 to 20 percent as the normal range for management of realized profits, is that right?

THE WITNESS: 10 to 20 percent of realized profits would be the incentive to the management. In addition, there would be a management fee that is normally that percentage.

THE COURT: You mentioned 2 to 3 percent.

THE WITNESS: That would be the cash management fee, let's say, on the assets managed. Then there would be a further 10 to 20 percent participation in realized profits.

Q I direct your attention to 12-278, which is the

three-page memorandum, attention, Stanley Glaze. I would like to read you a portion of that:

"In addition, the company is currently negotiating for the acquisition of an equity and debt position in a leading Caribbean air carrier with routes into Miami and other ports in Florida.

"Such an air carrier, whose name cannot at this junction be disclosed pending conclusion of negotiations, is on the verge of inducing jet service to certain of its domestic and foreign routes but significantly, even in the absence of jet service with which it must compete with such international carriers as Pan Am and Eastern, such carrier has earned in excess of $350,000 within the past six months commencing March of 1972.

"The company is contemplating an investment consisting of debt and equity up to $1,500,000 which it believes will significantly contribute to the strengthening of operations and earnings of the air carrier and offers real prospects for early and substantial return on the company's investment.

"This is just one of several outstanding prospects which the company is contemplating and which through the utilization of the initial preferred capital investment of assets acquired thereof will enable the company

to establish a broad investment base designated to offer, as noted above, short and long term returns which will inure primarily to the preferred capital investors."

I direct your attention to "inure primarily to the benefit of the preferred capital investors." The way this deal, for want of a better word, was structured, is that a true statement?

A I think if it were a profitable investment, that the preferred would again be subject to the limitation of 6 percent which would be the first dividend if declared by the company and then one-third of the profitability, let's say, of either realized or reported profit from this investment.

That 33 percent plus 6 percent, even though that is kind of a mixing of apples and oranges, since the 6 percent is determined before other adjustments, I would say that that still represents less than half of the participation, and the, let's say, profitability, if any, out of this investment, so I would be inclined to say that that would not inure primarily to the benefit of the preferential capital shares.

Q I direct your attention to page 1 of this three-page memorandum.

"The primary purpose for organizing the company

was to afford a vehicle for knowledgeable investors of a limited number to participate through 'preferential capital' in a sophisticated investment program with respect to growth opportunities throughout the world."

I want you to note that it refers to "knowledgeable investors."

Page 3 of the memorandum refers to "sophisticated investors."

In your opinion, would a knowledgeable or sophisticated investor purchase the preference shares offered pursuant to this memoranda?

MR. ORAM: I object.

MR. HORSE: On what basis?

MR. ORAM: You are asking him for an opinion of which he has absolutely no qualification to be able to answer.

THE COURT: Overruled.

Q Mr. Donovan?

A Let's try to dissect that question:

A knowledgeable investor, what I think my definition would be, is aware of other alternative investments that he might make. Those alternative investments might be in any of a number of similar kinds of activities. I would say from that standpoint, that a knowledgeable investor

with $3 million would have the choice of, let's say, investing in Vencap where his up side participation would be 6 percent profit if declared, plus an additional 33 percent of reported earnings with an unspecified management fee, whereas his alternative investments would be into larger funds that would have a specified management fee probably in the 2 to 3 percent range; and where there would be a participation to the management, that would be limited to the 10 to 20 percent so the residual 80 to 90 percent of those realized against would go to the investor.

From that standpoint, then, I think the preference of the knowledgeable investor who looks at various investment alternatives would be to go to that investment where his percentage of the capital appreciation was substantially higher.

Q The same sentence referred to "a sophisticated investment program with respect to growth opportunities throughout the world."

I would like you to turn to the description of Vencap's transactions contained as an enclosure to Exhibit 14-9, which is the May 3, 1974 letter from James Clavin to the SEC. It describes listed or traded securities and then not listed or traded securities.

Which area shows more activity?

A It is clear in terms of the number of transactions that that would be to the -- or in the favor of thelisted or traded securities.

MR. MORSE: I believe the record was in error. The exhibit is 14-19.

Q In your opinion, is trading in listed or traded securities an example of a sophisticated investment program with respect to growth opportunities throughout the world?

A I think it may be from the standpoint that when a company is initially capitalized with the outside investment of the $3 million, it would obviously want to put that $3 million to work as quickly as possible.

I would point out, though, that in terms of the listed or traded securities, that there is a high volatility or an apparently high volatility on these particular issues. It could be questioned in the way of trying to generate current income on that initial amount of capital to cover your operating fees and expenses as to whether investments into the high volatile securities would be the best place to make those initial investments versus, let's say, certificates of deposit or other short term investments which would have another return.

Q I have noted that one of the securities held in Vencap's inventory, at least as of May 3, 1974, is a

company called Lincoln American Corporation, 165,600 shares of that company.

Do you know what the current market price of Lincoln American is?

A I believe the closing price as of last Friday was $2 a share.

Q Another company held there is Universal Oil Products, 5,000 shares.

Do you know what the current price of Universal Oil Products is?

A I believe it closed Friday at either 14-1/2 or 16-1/2. I can't recall which. It is in today's Wall Street Journal.

Q Is there any economic size which is necessary to operate a venture fund? By that I mean the amount of capital generally required to get one of these things rolling.

A I think it depends upon the burden in the way of fees and expenses that the investor is prepared to withstand.

Normally I would say in specialized capital management of this kind, you will find that the investment activities have substantially more than $3 million in them so they could spread the management fees and expenses over a larger capital base.

Q Given that Vencap had an initial capitalization of slightly more than $3 million and payment for fees and expenses to the manager was in the range of $400,000 to $500,000 over a two-year period and on top of that, there was loans to management of $645,000, what would be your opinion as to the reasonableness of such payments as compensation for the managers?

THE COURT: Could I have that question read back.

(Question read.)

MR. ORAM: I object to questions relating to evidence which, I don't believe, is not contained in the record.

MR. MORSE: That is contained in the exhibits which followed Exhibit 12 and Exhibit 14.

THE COURT: On the assumption which I could be shown as incorrect, but on the assumption they were in the exhibits offered earlier and received subject to the qualification indicated, I will allow the question.

A On the basis of those numerical amounts and the up side participation, I would say that the package as structured for the management is disproportionately high and, in fact, and I think on the basis of comparisons with similar kinds of activities, you would find that it may be excessive.

THE COURT: What was that?

THE WITNESS: The total package to the management for managing this capital may be excessive.

THE COURT: How do you know whether it is excessive until you have seen the performance of the organization for more than a short period of time?

THE WITNESS: I think a way to look at that, in terms of the investment alternatives that the fund might employ, that is obviously very much dependent upon the quality of the management that you have involved; quality from not only an analytical standpoint, but also the number of contacts and what have you that the management may have.

Typically in these kinds of activities, you will find specialists that are sophisticated from both an analytical standpoint as well as our seasoned and experienced individuals who have a broad base of contacts and seek to develop those contacts and also to have investments referred to them

If you particularly focus on the percentage of realized gains, there I would say that an investor who let's say given comparable management might look at receiving 80 to 90 percent of those gains on one case versus a limitation of six percent plus another 33 percent on another case, that his preference would obviously be in favor of the higher percentage participation for him for his dollars.

THE COURT: This Exhibit 12-278, the memo from Vencap to International Investment, I notice in addition to the portions that were pointed out to you by Mr. Morse, it says on the last page in the last paragraph, the end of the first sentence that any investment must be viewed as speculative and then the last sentence says, the investment is not for the ordinary investor but for the investor who recognizes that risk deserves a high return.

Is it fair to say that there is at least a suggestion in this memorandum that the investment which is contemplated is not what you would call a normal sold safe conservative investment, rather as it says a risky speculative investment?

THE WITNESS: I think that is true, your Honor, but I was endeavoring to compare the specifications, let's say for this kind of risk-oriented investment with similar risk-oriented investments. It is clear those are not the, let's call them, investments in more established companies where your risk is not as high, but accordingly your return should not be as high if there was that much predibtability.

THE COURT: You had that in mind when you were making your generalizations about this particular investment.

THE WITNESS: Yes, sir, and specifically that is why I tried to bring out the spectrum of management fees and expenses because let's say the bank portfolio management where you have a low limitation of let's say less than one percent of the market value of the funds managed, those are typically in your more well-established companies.

THE COURT: I wondered whether with an organization of this sort which had a speculative program for what they call sophisticated investors, whether it wouldn't be normal to expect to have highly skilled experienced management who would be entitled to greater rewards than in a different situation.

You have testified that in your opinion the rewards here for management were out of line. Did you mean out of line with the usual conservative or normal type of investment or did you mean out of line with this type of an operation?

THE WITNESS: I mean out of line with this type of an operation. Typically again on that spectrum, the banks or let's say the capital management activities that focus on the more established companies have no upside participation, generally. They just have a flat percentage fee for the management of that money.

When you get into the more specialized and more sophisticated kinds of investments, then I think that you are obviously talking about a different kind of an investment than let's say the banks would typically make out of their capital management programs. With respect to the 10 to 20 percent which is the grouping of these risk-oriented venture capital management companies, I would say that the participation to management in the case of Vencap was out of line.

THE COURT: You mentioned that you knew personally of two organizations in which it went up to 25 percent?

THE WITNESS: Yes, sir.

THE COURT: Are those organizations which you think are comparable to Vencap?

THE WITNESS: I don't know enough about Vencap --

THE COURT: I don't mean in size, I mean in objectives.

THE WITNESS: In objectives, I think there would be a specification on the part of both of these that they would tend to specifically employ their funds into rish-oriented kinds of investments that would offer unusual returns if they were successful.

THE COURT: All right.

Q Mr. Donovan, given the fact that management of Vencap has two-thirds of the equity in the residual earnings of the company and given a $60,000 yearly salary for Mr. Pistell, one of the managers, and $20,000 a year for Mr. Blackman his associate in management and given a $150,000 house given to Mr. Pistell by the company and given the fact that Mr. Pistell is to share in 15 percent of the net profits of Vencap regardless of the fact that he has a two-thirds equity interest in the company, would you say that compensation to management was excessive?

A Yes.

Q What is your opinion of the investment merits of the preference shares in Vencap?

A I think to the knowledgeableinvestor, that there would have been an option on his part to invest in, let's say, the comparable opportunities where his percentage participation would be substantially higher.

Q In your experience, have you ever seen an offer to purchase securities which is as apparently weighted against the investor as this one seems to be?

A No. In fact, as I previously mentioned, I am only aware of two cases where the participation in earnings and those were both on realized gains, went to 25 per-cent.

THE COURT: I don't know what you mean by weighted against the investor, Mr. Morse.

MR. MORSE: I will rephrase that question.

Q Have you ever seen an offering to invest money in an entity in which the managers were to receive as great a rate of return as they apparently are to receive in the Vencap situation, vis-a-vis those people who are asked to put in money?

A Can you try that one again?

THE COURT: I think he already answered that question, although perhaps it hasn't been asked before.

Could you read it back?

(Record read.)

MR. MORSE: The return to thsoe people who are asked to put in hard dollars?

A No, I have not.

Q Prior to appearing today as an expert witness, have you ever been employed by the plaintiff IIT and/or its liquidators?

A Yes.

Q In what capacity?

A To assist them with a financial analysis of another investment which IIT had made.

Q Have you been paid by IIT or its liquidators?

A Yes.

Q Are you being paid to testify today, sir?

A Yes.

MR. MORSE: No further questions.

THE COURT: We will take a short recess.

My copy of 14-19 is not an exact duplicate. There are two pages in the folder which I don't have. I would appreciate if you would check that for me and if my copy is not complete, make it complete.

(Plaintiff's Exhibit 12 and 12-259 through 12-301, not consecutively, marked in evidence.)

(Recess.)

M I C H A E L D O N O V A N, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. ORAM:

Q Mr. Donovan, I believe you testified you were employed at Laird & Company?

A That is correct.

Q Would you give me the dates, please?

A From July, 1969 through September, 1973.

Q Was that your first job after getting out of graduate school at Stanford?

A First full-time employment after graduation from Stanford.

Q I wonder if you could specify for me exactly what it is you did while you were at Laird?

A Sure. During the earlier part of that period, I was involved in providing client service to two active investments in the Laird portfolio.

Q What does client service mean?

A That ranged anywhere from raising capital for these companies, to assisting them in their merger and acquisition programs and in one case, in a divestiture program.

Q Were you in charge of those programs while you were at Laird during that period of time?

A I was in charge of servicing those two clients, that is correct. Towards the end of my period of time at Laird, I was in charge of the export development program which was Laird's activity to sponsor the creation of new ventures behind qualified management.

Q By the way, is Laird in business today?

A It was acquired by G.H. Walker.

Q You mentioned you were particularly familiar with two situations which you found comparable to the Vencap situation. I wondier if you could describe those

situations in some detail for me?

A I mentioned there were two that I knew of where the portion of capital appreciation which would accrue to management exceeded the 20 percent number and both of those were 25 percent. In both cases they were relatively small organizations of three to four managers within it, let's call these professional managers of the funds. They generally had several, either one or several prominent investors who had provided venture capital to them and given them the responsibility to invest and manage these investments.

Q Let me see if I understand it.

In both cases you had highly professional managers, is that correct?

A That is correct.

Q And in both cases you had one or possibly two investors, is that correct?

A There would be one or more.

Q How many more?

A I can't tell you specifically what the number of investors was in the case where they had more than one.

Q Were these entities United States entities?

A Yes, they were.

Q Have you ever dealt in your area of expertise with

a Bahaman company?

A No.

Q I think you said at one point, Mr. Donovan, you weren't very familiar with Vencap, is that correct?

A That is correct. I have had limited information which was presented to me here.

Q What do you know about it?

A I know that it was an entity established to invest the capital which was raised through the issuance of these preference shares.

Q And nothing more?

A Well, there were obviously requirements in terms of, or a description of the kinds of investment activities that Vencap would have.

Q Where is that description contained?

A I believe it is in the three-page memorandum.

Q Mr. Donovan, would you tell me the names of the two companies, please, that you found comparable, at least in the area of capital appreciation benefitting the operators; would you tell me their names, please?

A I think that in the way of comparability, I didn't say comparable, I said that there were only two I knew of that were within the 20 percent limitation.

Q I stand corrected. May I have their names?

A Gunwin Ventures and Brentwood Associates.

Q What was the business of Gunwin Ventures?

A What was the business?

Q Yes.

A Venture Investor.

Q What kinds of things did they invest in?

A Risk-oriented ventures.

Q Specifically?

A Companies anywhere from small start-up situations to your more developed companies where they would require an injection of additional working capital to, let's say, expand their business activities.

Q I have to get a little specific.

What specifically did Gunwin Ventures that you can recall invest in? Names of companies.

A I think rather than describing one of let's say many investments that they have had, that generally speaking the focus at Gunwin was to find a situation that offered a potential for high capital appreciation. There was risk capital employed in these ventures. Some of them were start-up ventures, others were more developed, more mature kinds of companies.

Q Which was the most prevalent of their investment, in start-up high-risk situations or in the more established,

settled companies?

A I think more established settled companies is again only by comparison to let's say the risk in a start-up.

Say a company is operating, you have less in the way of unknowns, normally, because you have management that is in there, you know more about the markets, you have some past history. In start-ups, you oftentimes don't have that.

Gunwin's orientation would have been more to the established companies but again these are by no means comparable to your large New York Stock Exchange companies. These would be businesses that might range in sales from 2 to 30 million dollars in sales volume.

Q But the majority, if that is a fair characterization, a majority of their investments were not in the start-up type of company, is that fair?

A Many of them were not, that is correct. There are others that are in this same category of venture management who do specialize in start-up situations.

Q The ones you are familiar with, I think to get onto another subject, Gunwin invested primarily in other than start-up situations, is that correct?

A I wouldn't say primarily. I would say they had

many investments in both categories, but I would say their leaning was towards the established company.

Q So more than in established companies than start-up companies?

A Right.

Q The other one was Brentwood?

A Brentwood Associates.

Q Describe that for me, if you would.

A I think their activities were in many ways parallel to that of Gunwin. It was formed more recently. I think back in 1972 to be specific. The three individuals who were the management, professional management team in there raised a pool of capital to do high-rish venture investing.

Q Were you one of the managers of either Brentwood or Gunwin?

A No.

Q How old are you, Mr. Donovan?

A 31.

Q I think you testified that in your experience the more qualified the management in type of business in which Vencap is involved, the higher the amount which could reasonably be expected to be received by that management, is that correct?

333A

mits, yes.

: Would you read back that last ques-

ead.)

ow Mr. Pistell?

not.

ow anything about his background?

tle.

nlighten you, Mr. Donovan.

ell has been a stockbroker, investment

own firm of investment bankers, chair-

f Goldfield, General Host, vice-chairman

mour & Company, chairman of the board

nes, chairman of the executive committee

n Corporation and director of various

E: Your Honor, I object unless there

in the record for showing that this

se.

: I will connect that, your Honor,

with Mr. Pistell also.

T: Yes. The question is based on the

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Q Mr. Donovan, d

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experienced manager of V

A Probably.

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Vencap?

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what his role was and what the results were to make a better determination.

Q I take it that you come to that conclusion from your experience from July of 1969 to 1973 at Liard?

A Which conclusion?

Q That you are not certain whether Mr. Pistell's record qualifies him as a manager of Vencap's activities?

A That is correct.

Q Mr. Donovan, what do you conceive the duties of a manager of Vencap to be?

A To invest the capital of the company in those ventures which would provide the highest return, consistent with a reasonable degree of risk.

Q A reasonable degree of risk. What does that mean?

A I think that you obviously wouldn't go out and put money into something that had a very, very small probability of return and where that return, even if realized, let's say, would only be as good as another situation that would have a higher probability of return.

Q In other words, you are suggesting it would not be proper or not be the usual business of Vencap to make foolish investments?

A Sure.

Q That is true of any business, isn't it?

A Yes.

Q I think his Honor pointed out to you on Exhibit 12-278, the three-page memorandum, the language, inasmuch as this limited offering is being made to a select group of sophisticated investors, it is perhaps unnecessary to point out that notwithstanding the solid management experience and background which the company offers at this early stage in its development, any investment must be viewed as speculative.

The company is aware that investment of the type herein offered is not for the ordinary investor but for the investor who recognizes that risk deserves a high return.

I take it then that is a description of the type of investment that Vencap was to make, right? A high degree of risk not for the ordinary investor, speculative, correct?

A Correct.

Q Do you in fact know what investments Vencap has made, what its business has been?

A I saw that there was one investment in the airline where there was a note or a debt and an equity position. Other than the transactions in the listed and traded

stocks.

Q Do you know what in fact the investment was in the airline referred to in Exhibit 12-278?

A I think the record, and I would have to look at my exhibits which I have left down here on the table. There is Out-Islands Airways where there is a $662,000 investment and 9 percent debentures and 62,000 paid for 6,000 shares of stock.

Q What exhibit are you looking at, please?

A This is Exhibit 14-19, the third page -- the fourth page.

THE COURT: How many pages in that exhibit?

THE WITNESS: My exhibit has six.

THE COURT: Is this the completed exhibit?

MR. ANDERSON: Yes.

THE COURT: I don't have the cover page, is that part of the exhibit?

MR. KELLNER: Yes.

THE COURT: I don't have the last page unless this is my copy.

MR. ANDERSON: That is the exhibit copy, your Honor.

THE COURT: But it is not really my copy. All right. If I could have a copy of the entire exhibit --

thank you very much.

Q Do you know, Mr. Donovan, whether than investment was a proper investment?

A It looks like there was a return in the way of the payment for the debt capital investment and I believe there was a change through merger consolidation of some sort of the shares of the Turks & Caicos Airway Ltd.

THE COURT: What does that tell you in terms of profitability?

THE WITNESS: You would have to determine what the value of those residual shares in Turks & Caicos Airway to make a determination whether there was a profit or a loss.

Q Can you tell whether there was a loss?

A Again, on the basis of realized earnings or lost, you can tell nothing except that a substantial portion of the capital was returned.

THE COURT: Do you know what Lincoln American is?

THE WITNESS: I have a very rough awareness of Lincoln American.

THE COURT: What is it?

THE WITNESS: I believe they started with some commercial finance activities and broadened that into other insurance and financial activities.

THE COURT: Is that a relatively newly organized company?

THE WITNESS: I think it started from a predecessor company called Cobourn National or something similar to that and I don't really know what the history was on Cobourn.

Q Mr. Donovan, the three-page memorandum, 12-278, speaks of investments for sophisticated and knowledgeable investors.

Is it your opinion that IIT was sophisticated, a sophisticated and knowledgeable investor?

A I would say that they should have been.

THE COURT: In other words, you are saying that you don't know but they should have been?

THE WITNESS: I haven't enough experience or association or familiarity with who was in IIT to make that determination, but on the basis of what I have heard of the organization, that is why I have said that I think they should have been.

Q Are funds, mutual funds normally considered sophisticated investors?

A Yes.

Q Mr. Donovan, what do you conceive Mr. Pistell's salary should be for operating Vencap?

A I would say that a $60,000 per year salary is proportionate to salaries of other professional managers.

Q You were asked some questions which seemed to suggest that the salary of $60,000 was somewhat over-reaching. I take it you don't find that to be the fact?

A I made or based my opinion on the total package.

Q I am considering the salary right at the moment.

MR. MORSE: I object. The witness was about to explain his answer when he was cut off by counsel for the defendants and I would like to hear the witness answer that question.

THE COURT: Overruled. The witness should stick to the question and the question was what about the salary.

MR. MORSE: I would like to object on the further ground that the salary of Mr. Pistell is not defined as a flat $60,000 in any of the questions I asked the witness or in any of the documhnts referred to and I think it is improper for the defendant to state --

THE COURT: The witness has been answering the question on the assumption the salary was $60,000. If it is different from that, you can develop that.

I thought we got pretty much an answer.

MR. ORAM: I don't know where we are at this point.

THE COURT: Were you not telling us, Mr. Donovan, that you thought $60,000 was a reasonable salary for a manager of this type of organization?

THE WITNESS: That is right, your Honor.

Q Mr. Donovan, in your experience I wonder if you could tell me the performance record of mutual funds for the period beginning in the end of 1972 through the first quarter of this year?

A I would have to check the records, but my guess is, it would probably show some deterioration in their net asset position.

Q Would you agree if I suggested that that deterioration was about 28 percent?

A I wouldn't disagree until I looked at what it was.

Q That number doesn't seem too far out of line from your experience?

A Again in the mutual funds, I would say no.

Q You don't conceive, Mr. Donovan, that Vencap is a mutual fund, do you?

A I certainly don't.

Q Mr. Donovan, let's assume for a moment that Vencap made improper $300,000 or a ten percent return on the capital. How, as you understand it, would that $300,000 be distributed?

A You are saying that the net profit of Vencap was $300,000?

Q That is right, and it was determined to pay it all out.

A That 300,000 would be after the adjustment for the 15 percent incentive compensation.

Q Net of all expenses and net of that adjustment, correct?

A There would be a six percent dividend paid on the three million dollars.

Q Which would be how much?

A $180,000, so that 180,000 would be paid, then a determination would be made of what residual earnings would be and another third of those residual earnings would be paid.

Q One-third of the remaining would be what?

A I am not sure you can take the remaining. There are other factors that have to go into the calculation of residual earnings.

Q Perhaps you could point them out to me.

MR. MORSE: Your Honor, I don't know if this would be in the nature of an objection or what it would be, but I believe there has been an arithmetical error made. I calculate that six percent of $300,000 is $18,000

and not $180,000.

MR. ORAM: I believe the error unfortunately is on your part because the six percent as I understand it is paid on the initial capital of 3 million and not on the earnings.

MR. MORSE: I stand corrected, I am sorry.

A Residual earnings, and I am looking at item number 3 inthe description of the preference shares, are defined, shall mean for the purposes here, the net earnings of the company -- for the said fiscal year certified by its auditors after deduction therefrom, of all amounts charged against such net earnings in respect of all taxes, duties, imposition. The said six percent dividend provided in paragraph 2 hereof and interest dividends or other distributions paid to holders of any class of shares or securities of the company carrying rights to such dividends in priority to the rights of the holders of said redeemable preference shares.

Q You are aware that there are no taxes, is that correct?

A If you tell me there are none.

THE COURT: There are no what?

MR. ORAM: Taxes, your Honor.

Q Let's assume, and I believe it to be the fact

there are no other interest dividends or interest accumulations.

So the only deduction is the six percent dividend provided in paragraph 2?

A Right. Then we have 300,000 that you said we started with, 180 that was deducted for those dividens and a third of the remaining 120 would be another $40,000.

Q Out of the total ten percent return, what would be paid for the preferential shares?

A $220,000.

Q Out of how much?

A Out of 300,000.

THE COURT: You are going to have to go through that again for me.

THE WITNESS: The six percent dividend on the 3 million dollar investment to the extent it is paid out and earned is $180,000. Under the case assumed, there were net earnings of $300,000. The six percent dividend is 180,000. Of the residual which is 120,000, you take one-third of that which would go to the holders of the preference shares if earned and declared by the company.

The one-third would be an additional $40,000. Youthen have the six percent which is 180,000 plus the additional 40.

THE COURT: How much would Mr. Pistell get under

his employment agreement under these assumed facts, he would get $60,000 a year. He gets additional compensation equal to 15 percent of the amount of employers' net profits. I guess we don't know what the net profits are.

THE WITNESS: It would be somewhat higher than the 300,000 because that number I believe would be after the 15 percent. They would probably be around $350,000.

THE COURT: The net profits?

THE WITNESS: Before the 15 percent, I think the 15 percent would probably be somewhere in the 40 to 50 thousand dollar range.

Q Are you, Mr. Donovan, by any chance a lawyer?

A No.

Q An accountant?

A Not by training, no.

Q Do you have any experience or expertise with respect to memoranda of association of Bahaman corporations?

A Bahaman corporations, no, sir.

Q Have you ever dealt with one before?

A Not a Bahaman corporation.

Q You testified that you found the rights and preferences of the preferential shares to be in your experience extraordinary. I wonder what you base that on?

A On opinions as well as confirmations. My own opinions and confirmations from people who are either in the business of managing money or who have money that they put out to work to have managed.

There seemed to be in my own mind, I felt that up to 25 percent wasn't extraordinary. The central theme on the verification that I went through was that 25 percent would be at the high end of the range and the 10 to 20 percent of realized gains normally, would be the more typical pattern.

Q And your determination of what is typical or what is normal in your experience, I take it, is based exclusively on United States companies, and I further take it --

A No, sir.

Q Enlighten me.

A These may be United States entities, but in many cases they would also either directly make foreign investments or there may be affiliated funds that would make foreign investments.

Q Are these mutual funds that you are talking of?

A No. These again are what you would call venture management for discussion purposes.

These capital management activities in the

international markets would generally have a compensation package that would be comparable or lower than the domestic United States.

Q Can you give me specific examples of companies that you have dealt with that lead you to this conclusion?

A There are several merchant banks that have funds that they invest either domestically or internationally that I am aware of.

Q And these banks invest only in situations either domestic or foreign where there is a lower percentage of return to the manager, is that what you are talking about?

A I am saying the percentage return to the capital management for these entities was within the ten to 20 percent of realized gains parameter that I have previously given.

THE COURT: Mr. Oram, what do you want to do about lunch?

MR. ORAM: We could adjourn now. It wouldn't take me too long to accumulate my documents.

THE COURT: We will adjourn until 2:00.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

M I C H A E L J. D O N O V A N, resumed.

CROSS EXAMINATION (Continued)

BY MR. ORAM:

Q I have just a few more questions, Mr. Donovan.

Mr. Donovan, do you accept as a fair statement the fact that in light of the fact that you have testified that you don't know really anything about Vancap, you don't know very much about Mr. Pistell, that Vencap is not a United States Company and that it is not a mutual fund, that there could be differing judgments from your own as to the compensation paid to Mr. Pistell?

A I think there can always be different judgments, but I think in the kind of a market environment in which we live, any kind of a compensation arrangement has to stand, let us say, the test of inquiry and comparison. On the basis of comparisons as I would define them, it is out of line.

Q Let us address ourselves to that for a minute.

Do you happen to know what the salary and compensation, for example, for presidents of U.S. mutual funds is?

A No.

Q Do you happen to know what the salary and total compensation of Venture Capital organizations are in the United States?

A Generally speaking, I think I know the range, yes.

Q What is that range as you know it?

A I would say that the salary increment can run from 30 to 65 to $70,000 with incentive compensation to go to the management on the basis of profitability if either reported but primarily on a realized basis.

Q I take it that the 35 to -- I forget the upper limit you had, 65 to 70,000, does that include fringe benefits payable to such executives?

A That would be primarily salary, then you have, obviously, reimbursement for expenses, things of that sort.

Q Health insurance, all the usual.

Since Mr. Pistell's salary appears to be inside the bracket which you have just told me about, why do you think it is unreasonable?

A I think to look at any one increment of the total package is a distortion. I think you have to look at the totality to see is it comparable.

In looking at that totality, my opinion is that

it is not and that it is out of line.

Q The salary itself is within the limits?

A Yes.

Q Could you explain to me what you conceive Mr. Pistell's job to be?

A I think there could be several facets of that. He would obviously have to have connections or channels, let us call them of information flow whereby certain ventures that may have merit would be brought to his attention.

He would also have to have experience and the capability to select which of those prospective ventures that either may be brought to him or that he himself or his staff may uncover that might have some merit that should be looked at and those should be focused on intensively whether they are worthy of investment.

Q Do you conceive of Mr. Pistell's job to sit in an office and await the presentation of investment possibilities to him or leisurely travel to examine start-up companies or more developed investment opportunities? Is that what you conceive Mr. Pistell to be doing?

A No, I don't.

In fact, if his performance of his day-to-day let us say, paralleled that of many of these venture funds

that I am aware of, you have a very heavy travel schedule. People that are making a high number of contacts, looking at a large number of transactions. Some that they may initiate themselves is and some that may be brought into him.

Q It wouldn't surprise you, for example, in the performance of his duties for Vencap, Mr. Pistell has descended into a mine 3000 feet under the ground or landed in the jungle in a small plane?

A No, I don't think so.

Q When you were working at Laird advising the companies about which you testified as to their investment, was it your policy at Laird when you found an investment to charge a finder's fee?

A In the way of a finder's fee, it wouldn't have that label. Laird generally had a compensation that would accrue to it for the selection of management, locating a company that was a suitable investment venture and raising the capital to buy control of that company and install the manager as the chief executive.

Additionally, after a company was up and running, Laird would charge normal investment banking fees for acquisitions and/or financings as they may have been completed on a performance basis.

Q Did Laird ever take any positions, stock positions along with the companies?

A Yes. Generally speaking in the initiation of these investments, there was an equity position which Laird would purchase.

Q I think you testified, Mr. Donovan, that you were preparing a study on behalf of IOS, is that correct, or IIT?

A Preparing a study? I don't recall having mentioned the preparation of a study.

Q I thought you testified, correct me if I am wrong, that you had been retained as a financial consultant to, I thought it was, IOS for IIT?

A To IIT, and that was to look at certain of the financial and operating aspects of an investment that IIT had made.

Q In connection with your work for IIT, did you become aware of the consent decree, 1967 consent decree as it affected IIT?

A No.

Q I think finally, Mr. Donovan, that you testified that you found it surprising that the amount of money, the initial capitalization of Vencap being $3 million is remarkably low in your view, is that correct?

A It was small given the fact the intention was

to run it as an independent entity because of the fact from the standpoint of supporting an overhead to administer funds, you usually have a certain fixed cost and let us say as your dollar volume goes up, you can still have a management team handling a larger dollar volume.

Q Were you aware, Mr. Donovan, that it was contemplated that an additional $3 million would be put into Vencap?

A Yes, I was, because of the warrant provision in there.

Q Do you know why it wasn't done?

A Why the 3 million wasn't invested?

Q Yes.

A No, I have no idea.

MR. ORAM: No further questions.

REDIRECT EXAMINATION

BY MR. MORSE:

Q Mr. Donovan, your work for IIT was after the liquidation of IIT started?

A Yes.

Q You never worked for IIT's prior management?

A No.

Q I would like you to perform some calculations for me on this pad which I am handing up and this will be

I believe we determined before at $180,000.

MR. ORAM: Could we have a question for this witness?

THE COURT: I think this is the question. Apparently it is a lengthy question.

MR. MORSE: It is a lengthy question, your Honor.

Q That leaves $120,000, does it not?

A That is right.

Q I believe you testified before that under the procedure for dividing the retained earnings, 40,000 of that would go to the preferred shareholders and 80,000 of that would go to management.

A Yes, that is correct.

Q I would like you to total up for me the amount of money going to management and the amount of money going to thepreferred shareholders.

A To management you have the 80,000 which is the sharing in reported profitability.

Additionally you have the $52,823 which is the 15 per cent of profitability under the employment agreements and total salaries of 80,000 which are the 60 and 20,000 components.

Q What total is that, Mr. Donovan?

A I get $212,823.

Q How much goes to the preferred shareholders?

A The preferred would get 180 plus 40 which is 220,000.

MR. MORSE: Your Honor, so the record is clear in this matter, I would like Mr. Donovan to initial this page and I would like to ofer it in evidence as visual description of Mr. Donovan's testimony so far.

THE COURT: What page?

MR. MORSE: The page that Mr. Donovan is working on.

MR. ORAM: I have no objection.

THE COURT: All right.

MR. MORSE: I offer this in evidence as Plaintiffs' Exhibit 18.

(Plaintiffs' Exhibit 18 was received in evidence.)

Q I believe these figures are a little different than the figures worked out under Mr. Oram's example --

MR. ORAM: Is that a question?

MR. MORSE: Yes.

THE COURT: I don't know whether Mr. Oram is objecting.

MR. ORAM: I object to the form.

Q Is that different from the figures worked out

under the example by Mr. Oram?

A Let us say it is different from the standpoint that it is more thorough in looking at the total distribution of the $432,000, although the amount that would have gone to IIT, the 220,000 is the same as discussed.

Q Are you familiar with other venture capital funds besides Brentwood and Gunwin which you were cross examined about?

A Yes.

Q Can you venture an estimate as to how many capital venture funds you are familiar with?

A I would estimate that at somewhere between 30 and 70.

Q I believe you were also asked on cross examination about the difference in compensation rates for money managers on U.S. funds as opposed to foreign funds?

A That is correct.

Q Would the compensation of money managers for foreign funds as a general rule be higher, lower, or about the same as U.S. funds?

A They would be comparable to lower.

Q By comparable, you mean the same?

THE COURT: Comparable to what?

THE WITNESS: Comparable or lower.

Q Also on cross examination when you were referring to 2 to 3 per cent expenses for the managers of funds being within a range of compensation and expenses as a combined package, were you including legal fees or not including legal fees in that estimation?

A The 2 to 3 per cent, and again this is on the larger funds which are more typical, would cover the outside legal expenses other than the expenses, let us say, of the initial capitalization of the company.

Q Also I believe there was some question raised as to exactly what was Mr. Pistell's compensation and given these components, I would like you to state an opinion as to whether or not the compensation was reasonable, excessive or too cheap, if we would like to use that word. $60,000 in salary plus 15 per cent of the net earnings plus a $150,000 home, plus expenses, plus loans of $645,000?

MR. ORAM: I object. The questions have been asked and answered under direct examination.

THE COURT: I think so. You can answer it again.

A As I said before, if you look at the totality of the package here, it is out of line and excessive.

Q I believe you were also asked on cross examination about a 28 per cent decline in mutual funds.

A That is correct.

Q Do you know if this 28 per cent decline in the value of the holdings in mutual funds includes the fees and expenses of the managers?

A Generally, of course, the mutual fund would charge a fee. The management company would charge a fee against the assets that it is managing.

Q So we are not talking about a 28 per cent decline then have the fees and expenses taken off?

A It would depend upon the mutual fund.

MR. MORSE: No further questions.

THE COURT: Mr. Donovan, knowing what little you do know about Vencap, if they earned $432,823 on $3 million, is that good, bad, indifferent, mediocre? Does that indicate anything to you?

THE WITNESS: I think someone would first have to tell me whether that was over the total lifetime of Vencap or one year .

THE COURT: Let us say one year, last year.

THE WITNESS: One year performance in terms of the reported profitablity of the $32,000, it is probably better than investment into straight common stocks, better than

investment into straight common stocks, better than you may have had in short term or in the yield from short term securities such as certificates of deposit.

Again, I think within that number you have to be careful to make the distinction of reported profits versus realized profits and there may be unreported losses of securities that are still carried at cost that are not offset against that number within which you would be looking at a substantially different performance.

THE COURT: Let us stay with those figures for a moment. Suppose you had that performance in a year. I suppose picking out last year was not a good example. Let us say in a year you had that particular performance, and it wound up as you can see from the chart that the first stockholders got 220 and the common 212. Is that excessive, good, mediocre, consistence, good?

THE WITNESS: I think the 212,000 is roughly equal to the 220,000, so one way to simply it, there might have been a 50-50 split between management and the investors.

Under the formulas which I have previously provided as industry establishe dstadards, those would be clearly out of line with the 10 to 20 per cent of gains plus a management fee of 2 to 3 per cent.

THE COURT: When you say that, you are taking

into account the fact that you are starting with a figure of 432,000 odd dollars which is close to 15 per cent of the 3 million.

THE WITNESS: That is correct. Generally I think investors who put money up into these kind of venture activities would shoot for a compound rate of return in excess of 10 per cent per year. If you listen to many, they will say they are looking for20 to 30 per cent return per year. If they are limited to only one-third of the profits after their 6 per cent dividend, there has to be very high annual earnings for them to, say, achieve the kind of desired return on their investment.

BY MR.MORSE:

Q As you read the documents setting up the preferred shares, there was nothing in there, was there, that forced management to declare a dividend on the preferred stock?

A It appeared it was at management's prerogative to declare the dividend and again I think the control factors on the part of the investors was very limited in that there was no specified time period for the duration of their investment and no mechanics whereby they would be redeemed other than at the option of the company with the repayment of the 3 million plus the 6 per cent

dividend at any one year.

Q And management had the sole option of determining whether they would redeem, did they not?

MR. ORAM: Objection to the form of the question. I would rather have the testimony from the witness.

THE COURT: I will sustain the objection.

Q Was there anything in the documents which you saw which gave the preferred shareholders any rights to trigger redemption of their shares?

A To trigger the redemption, no. It was at the company's prerogative to redeem by the repayment of the principal amount plus only a 6 per cent dividend for that year.

Q Was there anything that you saw that would limit the company's prerogative to redeem?

A Which would limit the company's prerogative?

Q Yes.

A No.

RECROSS EXAMINATION

BY MR.ORAM:

Q Mr. Donovan, do you know whether or not it is normally the responsibility of the directors of a corporation to determine whether or not a dividend will be paid?

A Of course. I think that is a director prerogative but in venture activities such as these, I think there is a front end understanding between the company and the investor as to what the policy will be in terms of distribution to the investors as well as control factors.

Q You don't know, do you, whether or not there is any such kind of understanding existing?

A The only documentation I have seen is after the creation of Vencap in the specification as to the employment agreement between Vencap and Mr. Pistell.

Q Do you know whether normally preferred shares have any voice in determining when a dividend is or is not declared?

A Are you talking about preferred shares in a venture activity or in a normal corporate organization?

Q How do you understand preferred shares?

A I think if you are talking about preferred shares let us say in a large New York Stock Exchange Company or what have you, that is clearly at the board's prerogative.

Q Do you know whether or not in negotiating this agreement, IIT was represented by counsel?

A I would assume they were. It appears that that three-page document --

THE COURT: The question is, do you know?

A I don't know for certain, no.

Q You stated you were familiar with between 30 and 70 capital venture funds. That is a pretty broad range. Can you narrow it at all?

A The reason I came out with the broad range, under a more encompassing definition it might go up to 70 but if you took a more restricted focus, it would at the lower end of that range.

Q By restricted focus, you mean companies similar to Vencap?

A Companies that would have a closer similarity to Vencap rather than just in the area of managing risk capital.

MR. ORAM: Nothing further.

MR. MORSE: Nothing further.

THE COURT: Thank you.

(Witness excused.)

MR. ORAM: I would move to strike this witness' testimony on the grounds that it has not been demonstrated that he is an expert and on the further grounds that he is totally unfamiliar with Vencap or its operations.

THE COURT: Of course an expert, if he is an expert doesn't need to know about the particular transactions involved.

Do you have anything you want to say, Mr. Morse?

MR. MORSE: I think the witness demonstrated a familiarity with the field. Demonstrated a familiarty with regard to compensation of money managers and demonstrated a familiarity with regard to the type of investment that preferred shareholders in a venture capitalization would be getting into and I think all the criteria of an expert witness were met here.

MR. ORAM: I recall for your Honor, I think the witness testified he has had about three years experience.

MR. MORSE: That might go to the weight of the expert testimony as to how expert an expert might be, but there is nodoubt about the fact that this man is an expert.

THE COURT: I don't know where you draw the line between just going to the weight and becoming an expert.

I think, Mr. Oram, I will receive the testimony as the testimony of an expert.

MR. ANDERSON: The plaintiff calls Professor Jacob Ziegel.

JACOB ZIEGEL, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

MR. ORAN: May I have an offer of proof?

MR. ANDERSON: Professor Ziegel will be qualified in the field, as an expert in the field of corporate law of commonwealth countries including the Bahamas and will testify generally speaking, on the criteria set forth by the courts to testify to the relationships between a company, its officers and directors, between a company and its stockholders. He will outline the duties of officers and directors of a company, a Bahamian company and will advise the Court with respect to the application of those principles to the relationships between Mr. Pistell and Vencap and the IIT mutual fund holders.

MR. ORAN: Your Honor, I object to the receipt of any testimony from this witness on two grounds.

First, Federal Rules of Civil Procedure 44.1 requires reasonable written noticesof an attempt by a party to rely on foreign law. We received a notice on Saturday which notice says the plaintiffs intend to raise an issue concerning the law of a foreign country in the within action, to wit, the extent of the duty owed by corporate officers to the shareholders of a corporation pursuant to Bahamian

law.

As I understand the reason for the introduction of 44.2, it was to prevent surprise and to permit an adverse party to prepare himself to answer questions concerning foreign law.

The rule was introduced as I further understood it to require the pleading of foreign law in the pleadings themselves unless the case developed to such a point that it only became evident at a later time that foreign law was to be relied on.

I don't think that the notice received as I say on Saturday byyoour office is within 44.1, and I further object to the testimony of this witness on the ground that nowhere is foreign law pleaded. As a matter of fact, quite contrary, specific United States law is pleaded as the basis for this action unless Mr. Anderson is now telling us that in fact Bahamian law controls this action.

MR. ANDERSON: That is certainly not my position. I think that this action is based principally upon the securities laws of the United States and I think is an incidental but very important aspect of the case as the propriety of the expenditures that have gone out of this fund in the 20 odd months since the $3 million was expended. That has two aspects. First, there is nothing in

the three-page memorandum which is Exhibit 12-278 that gives any hint of the magnitude of the compensation and expenditures so that -- so that fact has a securities act implication, but further, it has an implication as to whether or not this company is beingoperated properly within the bounds of the laws of the state of its securities division because the laws of the state of its -- if implicit in the three-page memorandum is a representation that it will be operated in accordance with the laws of the state of its incorporation.

Your Honor, I think that in terms of giving the notice that is required under the rules, there was a question in our mind as to whether or not this strictly speaking fell within the rule.

We did mail out a notice nevertheless in accordance with the rule. If there had been any mystery, it could have been discussed with counsel and furthermore, I think counsel has known since at least Friday if not before that we intended to call an expert on Bahamian law.

THE COURT: Does anybody have a copy of the rule?

MR. ORAM: I do, your Honor.

THE COURT: It seems to me there may be a question whether this is within Rule 44.1. I am going to allow

the testimony, Mr. Oram. I am going to give you whatever time you think you need to prepare yourself to deal with it on cross examination if you feel that you need more time than is available today. It does seem to me there is a substantial question whether Rule 44.1 was intended to deal with a matter of this sort where I suppose there is an issue as to what the foreign law is. To put it more accurately, it seems the question here is given the foreign law, what follows from that? However, if you need time to prepare yourself, I will see to it that you get what I regard as reasonable time.

MR. ORAM: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Professor Ziegel, would you state your residence address?

A Apartment 211, 30 Elm Avenue, Toronto 5, Ontario, Canada.

Q Where and when did you get your training, Professor?

A I received my legal training, all of my legal training in England. I hold a Bachelor's, a Master's and a Doctor degree in law, all from the University of London. I am a member of the English Bar and I am a member of the

Ontario Bar. I was a member of the British Columbia Bar for a number of years while I practiced law on the West Coast.

Q What has been your professional experience subsequent to your completing your studies in law?

A I practiced for five years in British Columbia. I subsequently returned to England to take my doctorate in law. Since the completion of my doctorate I have taught law at various Canadian law schools. Most recently I have taught at McGill University in Montreal and I am currently a professor of law at the Osgood Law School of York University in Toronto.

Q Would you briefly outline your professional publications?

A Yes. I am the co-author and editor of two volumes of studies in Canadian Company law. The first volume was published in 1967. The second volume was published last year.

In addition, I have also written extensively in areas of commercial and consumer law. I am the author together with an English colleague of a comparative work on conditional sales and what the British call high purchase agreements.

I am the editor and co-author of a volume that was published in McGill University called Aspects of

Comparative Commercial Law.

Do you want me to go on?

Q You used the phrase, Professor, company law. Would you explain that, please?

A That is the term that is commonly used in England and the countries that follow the English form of corporation law to designate the English equivalent of corporation law in the United States. Even in Canada, the word is used interchangeably with corporation law and it derived from the days in England when companies were still unincorporated and even after the first company was incorporated in 1944, a memorandum of partnership deed was used to effect the incorporation and hence the continued use of the word company.

Q Are you admitted to the bar in the Bahamas?

A No, I am not.

Q Have you ever testified before as an expert witness?

A Yes.

Q Was that with respect to Bahamian law?

A No, it was not.

Q In what court did you testify?

A To the best of my recollection, it was in Montreal and some years ago. That was on a question of British

Columbia company law.

Q If you know, where are Bahamian lawyers trained?

A To the best of my knowledge, and it was certainly true while I was studying in England, the great majority if not all of them used to train in England.

Q Did they receive the same training that you have received?

A Yes, they did. I could amplify that if I may. I believe until very recently there were no law schools anywhere in the West Indies, so really a prospective lawyer from the West Indies would have no alternative but to go to other commonwealth countries whose law courses and/or law degrees were recognized qualifications for practice in the Bahamas.

Q What are the sources of Bahamian company law, Professor?

A To the best of my knowledge and belief, they appear to be derived almost exclusively from English law. The marginal note of the current Bahamian companies act indicates that the first Bahamian companies act was adopted in 1967. That was a consolidation of the Brishish companies act in 1962. I have looked at the current Bahamian companies act which appears in the collected laws of 1965.

It has all the earmarks of being based on the 1962 companies act with subsequent amendments.

Q Professor, in the United States we have two bodies of laws that are roughly the codified laws and the common law. Is that the same situation in the Bahamas?

A Yes. I am not sure that I would draw the same contrasts. On the whole there is only a limited amount of codified law in England. If in fact you are asking me whether the Bahamian company law is codified, my answer would be no. It is very much the same position as English law. That is, you have a lot of statutory rules but they are not an exhausted enumeration of the company law rules and that you can only understand English company law or for that matter Bahamian law or Canadian company law if you have a thorough understanding of the parallel rules of common law in the equity.

THE COURT: What aboutthis country?

THE WITNESS: I suspected it is pretty much the same here.

Q Professor, the Bahamas recently became independent of England, is that correct?

A Yes, I understand that.

Q Do you know whether or not that fact changed the applicable law with respect to Bahamian corporations?

A To the best of my knowledge and belief, it did not.

I should perhaps explain that an act of the Bahamas Ialands known as a declaratory act which goes back to 1799 provides that the common law of England, including the rules of equity, shall apply in the islands unless and until altered by appropriate statutory law.

A similar article appears in the statutory instruments creating the commonwealth of the Bahamas Islands so I think it is fair to assume that both the old statute and the applicable common law rules continue to apply in this area.

MR. ANDERSON: I tender the witness as an expert.

MR. ORAM: I would object on the ground that the witness has testified that he is not admitted to the bar in the Bahamas, has never testified on a Bahamian matter. He does not know whether Bahamian statutes in any way modify the English statutory law which he says controls and I would raise a question as to his expertise.

THE COURT: I am concerned about the points that Mr. Oram makes, Mr. Anderson.

MR. ANDERSON: Your Honor, we have a professor of law who is knowledgeable in the laws of the commonwealth countries, who received his training at the same place that Bahamian lawyers are trained and who has him-

self looked into Bahamian law. I think that we do not need to get a member of the bar of the Bahamas here of which there are a very limited number and I think that a teacher-professor, even if he were not a lawyer is qualified to testify with respect to the law of another country.

THE COURT: I will take his testimony, but I will have in mind in receiving his testimony that he is not a Bahamian lawyer. Perhaps he is as expert as a Bahamian lawyer, but I will have that question in my mind.

All right.

Q Professor Ziegel, would you explain in general terms the duties or obligations that a director of a Bahamian company owes to his company?

A Yes. Perhaps I should preface it with the remark that the Bahamian companies act like the British companies act does not contain a general statement of its duties and obligations of a director. Such a statement or summary would have to be found by a perusal of the applicable case law.

Many text writers, for the purposes of categorization would subsume the directors and officers obligations towards their company under the three principal headings. The obligation of honesty and good faith. The obligation

of loyalty to the corporation and finally, the obligation of prudence and exercise of care and skill in the discharge of their responsibilities.

Q Professor, I show you a portion of Exhibit 10 entitled Articles of Association of Vencap Limited.

Could you tell Judge Stewart, what are the articles of incorporation of a Bahamian company?

A They correspond to the bylaws in an American company.

Under English companies law, and as I mentioned the Bahamian companies act is identical in this respect, a company on incorporation has to file or adopt two documents of constitutional dimensions. The first is known as the memorandum of assocaition and that contains the fundamental chart of the company and can only be changed subject to statutory permission.

The second are the articles of association and they correspond to the bylaws in a North American corporation and they can usually be changed by special resolution of the shareholders in a general meeting.

Q Referring to paragraph 56 on page 14 of the articles of association of Vencap, there is the phrase, "Fiduciary relations," do you find that?

A Yes.

Q Is that in relationship to the directors of the company?

A Yes. Well, English company law, any officer or director of the company is deemed to stand in a fiduciary relationship to the company or sometimes will be put in mind of Uberrimae Fidei, which means utmost good faith.

MR. ORAM: I wonder if the witness could speak a little louder. I am having a little difficulty back here.

Q Do the directors of Vencap have a fiduciary obligation to Vencap?

A Yes.

Q Do the officers of Vencap have a fiduciary obligation to Vencap?

A Yes.

Q Would you, Professor, explain to the Court the doctrine of oppression of minority?

A Yes.

That doctrine governs an important aspect of the relationship between majority shareholders and minority shareholders and limits the extent to which minority shareholders are bound by majority decisions. The ordinary rule of course is in English law and therefore in some Bahamian law, that majority shareholders can bind the minority.

There are a series of exceptions which are usually encompassed in the so-called doctrine of the oppression of the minority. Thatis certain types of behavior, certain types of decisions which even though taken or approved by the majority of shareholders, will not be binding by an objecting or dissenting shareholder on the grounds that they violate some canons of fair play or honest conduct on the part of the majority of shareholders.

One of the best known examples is, where the majority of shareholders attempt to give away some of the company's property, I use the words "give away" to indicate not a bona fide contractual transaction, but one which is characterized by the Court as tantamount to a gratuitous gift. Such types of transactions have been regularly struck down by the English courts and other commonwealth courts on the grounds they constitute an oppression of the minority.

I might -- perhaps I should elaborate a little more. There are situations in which the directors may be precluded from acting in a given matter because they are in a position where their duty and their self-interest conflicts. It may be that certain types of actions they wish to take are outside the powers of the directors, but fall within the powers of the shareholders. In those

cases it may be necessary for the directors to go to the shareholders to seek approval for the contemplated course of action.

The courts have held, and regularly held, if the approval that is sought would amount to, in effect, a divestment of the company's profit -- I am sorry, of the company's property for no sound reasons, then that conduct would constitute an oppression of the minority and the stigmatized action or vote will be set aside by the court.

Q Does the doctrine of oppression of minority apply even though there is strict compliance with the articles of association with respect to the disclosure of the interest of the directors?

A Yes, but a great deal of course would depend on the facts of the case. The general rule is -- the common law rule was, a director couldn't enter into a contract with his own company because that would put his duty and his self-interest in conflict and his duty was to give his undivided attention and loyalty to the affairs of the company.

To counteract this rule, the bylaws regularly provide that directors may enter into contracts with their own company provided there is disclosure of their personal

interest in the contract either to their fellow directors or in appropriate situation to the shareholders at large.

Now, the problem that arises, either you have no independent board of directors to whom the disclosure of self interest can be made or even though where the shareholder, the majority shareholders purport to approve a contemplated contract, it in fact amounts to an oppression of the minority.

THE COURT: That is what I was curious about. If the directors decide that this rule of law relates to a particular transaction and the directors decide therefore, they will not act on the proposed transaction and instead ask for the vote of the stockholders and a majority of the stockholers vote, let us say, in favor of the transactions, does the minority still have at that point an opportunity to set it aside becuase of this doctrine?

THE WITNESS: Yes, they do. As I say, if the Court comes to a conclusion that it amounts to a giving away of the company's property. There are several leading decisions in the House of Lords.

THE COURT: Who do they seek relief from? The corporation I suppose, to set aside the transaction?

THE WITNESS: It will probably have to take the form of a derivative action, although the derivative

action is not used in England.

THE COURT: Can you get damages from the majority stockholders if damages occur?

THE WITNESS: Not ordinarily. Perhaps if you could show they were motivated by malice, you could perhaps have an action in tort against them for wilful action to injure. Derivatively you would have an action to enjoin them.

THE COURT: Or to nullify or set it aside?

THE WITNESS: Yes. To have a situation which has arisen most commonly, wherethe directors see a very fruitful opportunity to acquire an asset or a contract in which the company has an existing interest and they have gone along using their position qua majority shareholders, they have then purported to get authority from the general meeting for the asset to be disposed of or sold to themselves or perhaps to some other company in which they have a strong interest, but it is in these situations that the courts have come along and struck down the majority of approval on the grounds that it constitutes an oppression of the minority.

THE COURT: Does the question of good faith enter into this? If all you can show is that the majority considered it a matter of not unreasonable business judgment, that course A was better than course B, where do you come

out?

THE WITNESS: Well, the courts know -- you are quite right, your Honor. The courts do not substitute their business judgment for either the judgment of the directors or the majority shareholders. They would first have to satisfy themselves that the transaction could not be judged on any reasonable basis of business judgment. That what the effect amounted to was a divestiture of the company's property in order to benefit a majority shareholder or director personally.

THE COURT: So you get down to a lack of good faith?

THE WITNESS: I mentioned earlier in enumerating the duties and obligations of officers and directors that the concept of loyalty to the company and the concept of good faith. The doctrine of good faith is important and the courts are asked to distinguish between the objective powers of the directors and their subjective powers. A good example is, directors may be empowered to set up a pension scheme for their employees or perhaps the employees' windows. Objectively they unquestionably have the power to set up pension schemes. Subjectively they must do it in good faith and with a view to furthering the interests of the company.

Now, the evidence indicates that in deciding whether or not to establish a pension scheme, they never consider the company's interest, then the English courts have set aside the scheme because of this absence of proper motivation on the part of the directors. The same would be true, for example, in establishing salary levels. An English court would not substitute its judgment for that of the directors, but if the evidence shows that in setting the salary level, and in fact the company's interest was not considered at all or to put it somewhat differently, the Court comes to the conclusion that the board of directors is simply motivated if giving themselves substantial sums of money, then the court would reach the conclusion that in making the salary decision, the directors have not truly acted in what they deem to be the company's interest but have been motivated by wrongful objectives.

BY MR. ANDERSON:

Q Professor, I would like to read to you a phrase from Rogers against Hill, a United States Supreme Court case, 289 US 582, decided in 1933.

MR. ORAM: Your Honor, does this quotation go to the matters of Bahamian law?

MR. ANDERSON: I am going to ask him whether the

Bahamian law is comparable to that set forth by Judge Swan.

MR. ORAM: There is some question as to whether that, your Honor, is proper. He is reading a United States case and asking whether it applies to the Bahamas to a witness who I have doubts about his knowledge as to Bahamian law.

THE COURT: Overruled.

Q Judge Butler delivering the opinion of that in that case says at page 591, "Judge Swan," and Judge Swan was the judge in the Court of Appeals that had heard the case before it got to the Supreme Court, "Judge Swan indicates the applicable rule" if a bonus payment has no relation to the value of services for which it is given, it is in reality a gift in part and the majority stockholders have no power to give away comporate property against the protest of the minority."

In your opinion, Professor, would a Court applying Bahamian law adopt a comparable rule with respect to Vencap?

A Yes, I believe the answer is yes, on the assumption I made at the outset that Bahamian law and English law in the company law area, are the same.

I may elaborate a moment. The commonwealth courts would adopt a problem of this kind under two head-

ings. One is under the doctrine of ultra vires, under his heading of good faith in making decision. The British doctrine of ultra vires is stricter than the American doctrine of ultra vires as I understand it and it seems to be held repeatedly, even in establishing a pension fund for retired employees might be ultra vires if it bore no direct relationship to the ongoing business of the company and is a well known judgment of Lord Bowen where he says the law does not say there may be no cakes and ale but that cakes and ale would only be given to the extent that it benefits the company.

In any event, to counter that, the rather conservative approaches to the ultra vires doctrine, it has been common for the memorandum of associations to contain specific powers empowering the company to establish the conservatory pension schemes, to make donations to charity and so forth.

So, objectively speaking, a company may have the power to do the things which it purports to, but nevertheless the Courts still apply the second test, namely one of good faith, whetherin fact the majority shareholders or the directors in acting in the way they did would generally further the objectives of the company or whether as you quote Chief Justice Swan as saying, really making outright

gifts and in my opinion, an English Court would normally conclude that it is very difficult to justify an outright gift whether it is sanctioned by a vote of the shareholders or whether it is sanctioned by a vote of the directors would it really matter very much.

Q Professor, paragraph 56 of the articles of incorporation, articles of association of Vencap relate to transactions between officers and directors of the company and themselves.

Have you reviewed that provision before giving your testimony here today?

A Yes, I looked at it briefly this morning when I cameinto court.

Q Does the doctrine set forth in that provision of the articles restate the normal obligations of officers and directors or is that in addition to the obligations of a corporate officer and director under Bahamian law?

A My answer would be neither. At common law, a director is not permitted to contract with his own company on the grounds it involved a breach of his fiduciary obligations. Therefore, bylaws, like Section 56 of these articles, really can amount to a relaxation and modification of the common rule so as to permit the director to enter into contracts with his own company

provided he makes disclosure to his fellow directors.

THE COURT: Is this a fairly common provision?

THE WITNESS: It is more generous to directors than I have seen but provisions of this kind used to be common. Nowadays, the modern company law in many parts of the commonwealth specifically have statutory provisions dealing with the duties of directors contracting with their own company and indeed with a view to trying to prevent some of the more generous clauses of this nature.

THE COURT: I take it there is no reason why youcan't have a bylaw or article of association permitting dealing between an officer and director of a company and a company?

THE WITNESS: That is correct, your Honor, subject to two caveats, and the first is, it doesn't violate any applicable statutory provisions and to the best of my knowledge, there are no applicable statutory prov-sions in the Bahamian company act and secondly and probably more importantly, the directors, both the self-dealing director and the other directors act in good faith. I don't thinkas I read Article 56 and as I believe it would be construed by a court, although the article permits a director to engage in a contract with his own company subject to disclosure to his fellow directors,

it doesn't of course give him carte blanche to enter into any type of contract with the company. I believe that the criteria of good faith and fair dealing would still have to be observed.

Q Would that also apply to the duties of honesty, loyalty and prudence to which you earlier referred?

A Prime facia, yes. You appreciate so far as the duty of loyalty is concerned, an article such as 56 does amount to a relaxation of the strict standards of the common law.

As I mentioned earlier, the common law didn't permit a director or officer to enter into a contract with his own company because of the theory that directors obligation was to give his undivided attention to the company's affairs; that he was expected to participate in all decisions coming before the board of directors and hence, if he had a personal interest in the contract, he obviously couldn't participate in a discussion of it.

As is, Article 56 does therefore involve a relaxation of the common law standards of fiduciary obligations.

THE COURT: I take it you are saying, despite Article 56, a director-officer could not engage in self-dealing without having to take into account the obligation of the common law, particularly good faith,

so he would still be subject to those obligations. Article 56 doesn't relieve him of his obligations under the common law?

THE WITNESS: That is so.

THE COURT: Though I am not sure what it comes to when you say that this is a relaxation, the law still controls.

THE WITNESS: Part of the old law.

THE COURT: I suppose as to loyalty, [illegible], it takes it away or relaxes it.

THE WITNESS: Article 56, if I remember correctly, provides even though the director has a personal interest in the contract, he can still participate in the discussion of the prospective contract and he, I believe, can even participate in voting on it. That goes considerably further than the common law because the common law would have struck down the transaction on the grounds that the director had no business in entering into a contract with his own company.

So far as the first principle is concerned, Article 56 in my opinion does amount to a relaxation of the common law rule, but there is nothing in 56 itself that relieves either the contracting director or his fellow directors from exercising good faith or the other

obligations encumbered on directors in managing the company's affairs.

Q Professor, in an affidavit dated June 13, 1974 filed in this action, Mr. David Taylor states in paragraph 5H "A collateralized loan to an officer-director or shareholder is, upon information and belief entirely lawful under Bahamian law."

Is that a correct statement of the Bahamian law as you understand it?

A I would say yes, subject to one important qualification.

Let me start at the beginning. There is nothing in the Bahamian Companies Act that prevents a company from making loans or granting other forms of financial assistance to its directors. Many of the commonwealth, including many of the Canadian acts, there are no specific prohibitions on a company granting loans to its directors with some exceptions, but that is the principal statutory law. There is no corresponding provision in the Bahamian Company's Act. As a result, I believe that the deponent is correct in his statement of Bahamian law.

However, even though a company has power to make loans to directors, those loans must still be made in good

faith and in order to promote the interests of the company.

Q Professor, I ask you to assume that IIT is a mutual fund, that IIT made an investment in 30,000 shares of preference stock of Vencap on the basis of in part of the three-page memorandum which I have given you which is Exhibit 12-278.

I further ask you to assume the corporate proceedings reflected in Exhibits 10 and 11, particularly for the terms of the preference stock and the warrant.

If ask you further to assume that subsequent to the purchase of the preference stock and the warrants for $3 million by IIT, that Vencap entered into an employment contract with its president Mr. Pistell which is Exhibit 14-29A, providing for a $60,000 a year salary and a 15 per cent profit participation before sharing with the stockholders.

I ask you further to assume that in a schedule prepared by the accountants for the company, which is Plaintiffs' Exhibit 14-1, the compensation for Mr. Pistell is shown for 1972 as $101,640.62; that the compensation for 1973 as shown by the company's accountants is $210,000; that the compensation for 1974 as shown by the accountants is $20,000 and that there is also shown by the accountants

for the company, a salary advance in 1964 for $25,000.

I ask you further to assume that Mr. Pistell received a loan indirectly from the company in the amount of $500,000 which bears interest at the rate of 6 per cent and a subsequent loan of $55,000 which bears interest.

I ask you further to assume that in the approximate 20 months that the company has been in operation that there were expenses incurred which are not included in the schedule of compensation 16-1 or travel, entertainment expenses, limousine services, country clubs and telephones totalling over $100,000.

Professor, would you state what in your opinion a court applying Bahamian lawwould do if presented with the facts as presented to you in that question, and I would suggest that as we discussed earlier, break your statement downinto phase 1 and phase 2?

MR. ORAM: Your Honor,I am sure there is something objectionable in that question someplace. It went on for some five minutes, but I take it those assumptions are not being represented to be the facts in this case.

THE COURT: If they aren't, the question isn't any good.

MR. ORAM: You are representing them to be the facts?

MR. ANDERSON: If you have an objection that any particular aspect of that is not in evidence, that is a proper objection to make.

MR. ORAM: May I have one moment, your Honor.

THE COURT: We will take a couple of minutes.

It seems to me that the length of the question isn't controlling. I am sure that all of us have various hypotheticals which have gone on for a lot longer. If Mr. Anderson has misstated a fact which is in evidence, he is stuck with that.

On the other hand, if you can point out now that he has misstated facts in evidence, or that are not in evidence -- I beg your pardon. Stated facts that are in evidence or not stated facts already in evidence, I would like to hear about it.

We will take a short recess.

(Recess.)

MR. MORSE: Your Honor, I understand from some banter that is going on in the courtroom, that your Honor may want to adjourn this matter at 4 o'clock.

Our next witness is Mr. Robert Cassel who will testify pursuant to a subpoena and he and his counsel tell us they will be greatly inconvenienced if they have to come back tomorrow and we will ask your Honor not to adjourn at

4 o'clock and to take this hearing as long as possible.

THE COURT: Where is Mr. Cassel form?

MR. ANDERSON: American National Bank in New Jersey.

THE COURT: I do have a meeting scheduled for 4 o'clock this afternoon. I think, however, it is likely that the matters may develop so I don't have to make that meeting.

I do have a 4:30 meeting which involves people from out of town but I think that meeting will take maybe 15 or 20 minutes. I will be happy to stay until about 4:20 or so, adjourn for my 4:30 meeting which I feel I have to keep then come back hopefully at a quarter of five and go on until needed.

MR. MORSE: I would appreciate that very much. Counsel has been waiting two days on the subpoena.

MR. ORAM: It is all right with me.

Your Honor, I have the following specifications of errors in the assumptions that Mr. Anderson posed.

First, the interest rate on the loans were not 8 per cent, they are 9-1/2 per cent. And those interest payments have been made when due.

The purchase by IIT was not of 30,000 shares, but of 30,000 shares plus an option for an additional

30,000 shares.

Furthermore, that the loan to which he referred was fully collaterized by stock having a value in excess of the amount of the loan.

That the memorandum, the three-page memorandum memorialized prior conversations and was requested by IIT.

Next, that Mr. Pistell gave up a $200,000 investment in his apartment, a $50,000 a year job as chairman of Lincoln American and valuable stock options and moved his residence to the Bahamas in order to take charge of Vencap.

That IIT saw and approved through their counsel the bylaws and articles of association prior to the investment being made; that the accountants for the company have determined that the expenses to which Mr. Anderson referred have been determined to be ordinary and necessary business expenses; that IIT knew of andapproved of the loan prior to its investment in the company, and that at all times there has been full disclosure by Mr. Pistell of the loan in related transactions.

Finally, that the articles specifically permit loans to directors and officers.

I have one more item. The amount of $101,640.62

is referred to as being the total payments of advances and salaries to Mr. Pistell in 1972 includes $100,000 of his own money.

THE COURT: Are you willing to accept those qualifications, Mr. Anderson?

MR. ANDERSON: Your Honor, let me take them in reverse order.

THE COURT: It seems to me if you aren't willing -- I was going to suggest if you weren't going to accept all of them, I will permit your question to be asked and Mr. Oram on cross examination will ask it his way.

MR. ANDERSON: I think I can very briefly pare the question. I would not agree that Mr. Pistell gave up the various prequisites and emoluments to which counsel has referred in order to go into Vencap.

The 30,000 share option to which counsel refers is, I believe, in fact a warrant which is disclosed in the exhibits before the witness. The $101,000 figure I simply described to the witness is an amount entered on the records of the company by the company's accountants as compensation for Mr. Pistell.

I think the question may have been misunderstood in that regard.

THE COURT: I will overrule the objection and let

the witness answer your question, Mr. Anderson and of course Mr. Oram on cross examination can point out to the witness the qualifications thathe thinks ought to be made and get his view with respect to those qualifications in mind.

Do you have Mr. Anderson's question in mind now?

THE WITNESS: I will try and break it down into several parts.

First of all, the initial investment by IIT. I don't think an English court could construe that as having any relationship on the internal affairs of Vencap.

Going on to the relationship of the officers and IIT and their responsibilities to their own company and their own shareholders and possibly also going to the knowledge which Vencap and /or its officers may ha-e had or may be deemed to have had of any improprieties on the part of IIT's office in investing funds in Vencap for an imprudent purpose, but I don't think this is a matter of Bahamian law or English law, I think it would go to the duties and obligations of the officers of IIT and any derivative obligations that may have been imposed on the officers of a Bahamian company by reason of their imputed knowledge.

Coming to the various payments authorized by the directors of Vencap made to Mr. Pistell, whether

by st or related purposes, I would envision a British court approaching this among a number of possible ways. First of all, they could look at each of the transactions individually or discretely, as I think I mentioned earlier, ordinarily an English Court would not satisfy its judgment for the business judgment of the directors, provided, and this is important, provided the Court is satisfied that the directors were acting in good faith with a view to promoting the interests of the company.

However, if the Court reached the conclusion under all the available evidence that the directors never had in mind the interest of the company, or to put it somewhat differently, the overriding objective was to make something tantamount to a gift of some of the company's funds to the fellow director, then the Court would intervene.

Alternatively, the Court could also find that the directors in sanctioning these payments were acting in a distinctly imprudent or unskillful manner and would be liable for breach of their duties under this specific heading.

My own feeling is, an English court in maing a judgment could be influenced, substantially influenced by the alleged sequence of events and might feel that while any one

of these individual transactions could have been justified on business grounds, that as a group they appeared to be so abnormal and unusual and so egregious, that they could not be rationalized under the heading of an exercise of business judgment and in fact fortify the conclusion that the directors misdirected themselves, were not pursuing the best interest of the company but were pursuing some other improper goal. I think everything would very much depend on the facts produced before the Court. It is easy to state the legal proposition in the abstract. It is not so easy to state how it would be applied to the fact situation with all the surrounding circumstances .

MR. ANDERSON: I have no further questions.

CROSS EXAMINATION

BY MR.ORAM:

Q Professor, didyou give an opinion on the assumed facts that Mr. Anderson posed other than as I understood it that the court would have to look carefully at each of the transactions?

A No, not in specific terms. I outlined in my first meeting with Mr. Anderson the British law as I understood it and as I have stated it in court this afternoon.

Q Can you cite me to some cases which will give me the Bahamian law of the oppression of minority doctrine

to which you spoke?

A To the best of my knowledge, there is no work on Bahamian company law and to the best of my knowledge, there are no Bahamian law reports. My understanding is that Bahamian lawyers if they want to determine a point of Bahamian company law resort to the English company law texts.

If you want me to cite to you English company law texts, I will be delighted to do so.

Q Are there any cases involving Bahamian companies that you are aware of where this doctrine was applied?

A There were certainly privy counsel -- I think you have to appreciate something about the operations of common law courts in the former colonies. As I mentioned at the beginning of my evidence, the Bahamian declaratory act provides that the common law of England shall be applied in the Bahamian Islands and that rule is a very standard provision which appeared in most if not all of the colonies at some point or other including the provinces of Canada before Canada became an independent country; simply meant that if a court is presented with a legal problem, it would almost, as a matter of course, refer to the applicable English rules and the applicable English decisions and the case law dealing with the oppression of minority, you

will find the case law throughout the commonwealth countries.

Q Is it your testimony, Professor, that what we call a derivative action, is an action that is known in the Bahamas?

A Not in the sense of American law. There is an equivalent form of action, yes. There is a rule known as the rule in Foss and Harper and the exceptions thereto and the rule says generally speaking, the actions against directors must be brought by the company and therefore you must have permission to use the company's name, but there are a large number of exceptions to the rule. One of the exceptions constitutes the doctrine of oppression of the minority. That is, where the action is of a kind that is ultra vires the directors and that is ultra vires or could not be approved or ratified by the shareholders in a general meeting. Then the minority shareholders can bring action in their own names suing on behalf of themselves and all other shareholders make the company as a defendant.

It is, substantially, the equivalent of a derivative action under American law though it doesn't have the equivalent characteristics.

Q Is it your understanding that what we call here

the business judgment rule, which I think I state correctly when I state that operation of a corporation is in the hands of its directors who are charged with managing the corporation and will not be interfered with by the corporate except in extreme and unusual circumstances; is that your understanding of the rule as it obtains in the Bahamas?

A I would agree with the first part of your statement. That is, business judgment rule per se. I would say that the English courts follow the business judgment rule.

The second part i would say it has to be something extremely unusual. I think it would be sufficient if the evidence indicated that the directors have not directed their mind to what was in the best interests of the company.

An example is an English decision of 1967 called Henry Roith where a majority shareholder director was anxious to make provision for his wife after his death. For some reason or other, he didn't want to leave her his shares, so he had the company adopt a bylaw that would provide his wife with a pension after her husband's death. The evidence showed this was done purely in the interest of the shareholder and director and bore no relationship to the interest of the company and that the shareholders and

directors in approving this resolution had never directed their minds to what was in the interest of the company and accordingly the Court held that this resolution is bad and the action was set aside.

Another example but quite a different one is in taking over fights such as occurred in Bamford & Bamford where the directors on being confronted with a takeover challenge promptly voted to set up a new bundle of shares in favor of their employees because they wanted to protect the company and its employees against the prospective raiders.

The Court agreed with the plaintiff that the directors were exercising there allotment powers for improper purposes since the allotment powers had not been given to them for the purpose of warding off an outside attack.

I think this is an example where objectively the director might have the power to do the things they do but subjectively, by misdirecting themselves, the action was impugnable.

Q I take it that the exceptions to the business judgment rule which you have been discussing, the result would have been different had the evidence shown that there was some valid business purpose for what was

done?

A Yes, there could well be.

Q I take it the general rule could be stated then, that the Courts will not set aside actions of the directors if those actions are not ultra vires, and if they are taken in good fath?

A Yes, provided you also agree as to the meaning of good faith.

Q How do you understand it, Professor?

A Well, good faith means as being designed both to promote the company's interests and not being motivated by purely selfish interests.

MR. ORAM: May I reuqest that I reserve any further cross examination of this witness until I have had an opportunity to prepare myself on questions of Bahamian law?

THE COURT: In terms of time, Mr. Oram, what do you have in mind?

MR.ORAM: I would hope I could prepare myself as best I can over the evening and continue tomorrow.

MR. ANDERSON: Your Honor, I appreciate the time problem of witnesses. He is away from home. I don't know what his personal schedule is.

THE COURT: Can you be here tomorrow, Professor Ziegel?

THE WITNESS: I am afraid there is a difficulty. I did not come prepared to stay overnight. I do have a good deal of work to do in Toronto. This is the second time I have come to New York at considerable personal inconvenience. While I am happy to help the court, it would certainly accommodate me greatly if counsel could finish his cross examination today. Otherwise I would prefer if it has to be finished at a later date, you would rather leave it to next week rather than tomorrow.

MR. ORAM: Under those circumstances, I will do the best I can.

THE COURT: It does seem to me, Mr. Oram -- it would have been useful, Mr. Anderson, if you had given Mr. Oram a little advance notice.

Why don't we go ahead, Mr. Oram and I understand the dates that are working under and of course if you can't finish today and need more time, we will have to work out a program with Professor Ziegel.

Perhaps you can work it out.

BY MR. ORAM:

Q Professor, in preparing for your testimony today, did you do any research into the Bahamian law on the statutes in connection with preparing to answer Mr. Anderson's hypothetical question?

A No. When I was first asked by Mr. Anderson's fir whether I would come and assist the court, there was no discussion as to any specific questions I would be asked.

I did consult our library as to Bahamian law. I gotout the Bahamian statutes which in our library go up to I think 1972. The 1973 statutes have apparently not been published in bound form, and in particular, I consulted the Bahamian Companies Act as well as subsequent amendments to the 1965 Act.

I also looked at some other Bahamian statutes that I felt might have some bearing on the present case.

Apart from that I also refreshed my memory by looking at a standard English textbook on standard English law as well as some Canadian materials.

Q Professor, do you have in mind any specific decisions which relate to the facts as you understand them in this case?

A No, I can't think of any, but I can think of all kinds of decisions which the courts have held that certain payments would constitute what tend to amount to a gift of the company's money or property and were therefore improper, including cases where the courts have held that directors' emoluments were excessive and could not be

justified and was therefore struck down as being nothing other than a disguised gift.

Q Can you outline for me with the name of the case and the facts as you recall them, cases which involved so-called gifts?

A Yes. There are two or three leading cases you refer to. Most commonwealth textbooks relate to Menier v. Hooper Telegraph Company. It was a decision around 1880, an English decision.

Another one is a decision the House of Lords decided I think around 1910. I wouldn't swear as to dates called Cooks v. Deeks.

Q Are there others?

A There are others, quite a number of Canadian cases.

Q Let us take these two, and perhaps you can give me the facts in Menier v. Hooper Telegraph.

A Before I do that, there is a more recent decision, an English decision involving a mining company and that was decided much more recently, around 1971 or 1972, I wish I could remember the name offhand. I will be happy to send the citation either to you or to his Honor.

The facts in the most recent case --

Q Let us start if we may back with Menier.

A That was a case where the company's directors had compromised an action with a third party and had then purported to adopt a resolution winding up their own company so they could take advantage of the -- take personal advantage of the compromise reached with the third party and the Court held this was improper because the winding up resolution was in fact designed to enable the defendant directors to make personal gain of what amounted to a part of the company's assets and was struck down on that account.

Q Is it your understanding that the facts of this case parallel those in Menier v. Hooper Telegraph as you just described it?

A I think we are concerned about principles. If the Court were to come to the conclusion that one or all of the transactions referred to by Mr. Anderson were either not taken in good faith or really were tantamount to a difference of the company's assets to the one or more directors, then I think the principles that I have mentioned earlier, namely, an attempt to part with a company's assets in favor of a director constitutes an oppression of the minority even if it has been approved by a majority of shareholders, would apply.

I don't think the nature of the asset matters at all. What matters is whether the Court is satisfied that the impugned transactions falls within the principle of oppression of the minority.

Q I take it that tha case, for the application of the general rule that you have put out involved a situation where the director seeing a corporate opportunity decided to liquidate the corporation and take advantage of it themselves, is that correct?

A Yes, in that particular case.

Those hppen to be the partiuclar facts, but the fact structure in the other cases were similarly different.

Q Perhaps you can tell me about the facts of Cooks v. Deeks?

A That was a case where the directors attempted to take personal advantage of a lucrative contract which they had initially concluded with a third party and they then purported to adopt a majority resolution transferring that beneficial contract to themselves and that was held again as an oppression of the minority because it was a giving away of an asset of the company.

Q Again, do you find anything parallelling the facts of that case in this case?

A No. Once again I think it is the principle that

is significant rather than the pargicular fact pattern.

Q The principle in both Menier v. Hooper Telegraph and Cooks v. Deeks, is that in cases where the directors without any business purpose either dissolved the corporation or take other action and appropriate to themselves corporate opportunity, the Court will look with disfavor on that action by the directors, is that correct?

A Except I would state the principle somewhat more broadly.

I don't think it is restricted to corporate opportunities.

Q Both cases involved cases of corporate opportunity, did they not?

A Yes. It was more than a corporate opportunity. It was an asset that the company already had. It wasn't a potential asset. It was a de facto asset.

Q In the first case there was an opportunity and I thought in order to avail themselves of it personally, they liquidated the corporation. That was a corporate opportunity?

A In English law a corporate opportunity would also be regarded as an asset of the company, even though it may be an abstract asset such as the right to enter into a contract.

Q In either of the cases to which we have been referring, Menier and Cooks, were either of the companies involved Bahamian companies?

A Not to the best of my knowledge.

Q Did either of them have articles of association or bylaws similar to the ones here in issue?

A They could well have had, but I don't recall off-hand.

Q Were they public companies?

A I think the first one may have been. I don't recall what the position was with respect to the second one. I don't believe it would make any difference under English law.

Q But you think that the first one was a public company?

A It may have been. I don't wish to be dogmatic.

Q Under Bahamian law, if IIT wished to sue on the principle enunciated in Menier v. Hooper Telegraph and Cooks v. Deeks, where would that suit have to be brought, against Vencap?

A I think that is a question of private international law or conflict of laws. I don't think it is a matter of company law as I understand it. In English law, the rule is, and I am now dealing with rules of disposition,

that you could sue a defendant where he is personally resident or carries on business. For example, you can sue a company if a company carries on business in New York. Doesn't matter where the company is incorporated, so long as it has some establishment within the jurisdiction. Whether the court would apply the same rule of jurisdiction for derivative actions, I can't honestly tell you.

Once again, I think it would depend on all the circumstances. Obviously it might well be if the officers or the directors or the connecting factors at the place of incorporation, the court might apply a different rule from the normal rule of jurisdiction but frankly I don't recall of any case where this jurisdiction has been raised.

Q Professor, one more thing.

In any of the cases involving the doctrine of oppression of a minority, are there any cases of which you are aware that involved holders of preferential stock?

A You asked me whether they also involved it?

Q Are you aware of any that do involve holders of preferred shares as opposed to minority holders of common shares?

A I don't recall of any case where the decision was drawn. I think that minority shares was used in the sense of objecting or dissenting shareholders rather

than as a characterisation of the particular character of the shares held by them.

Q Is it your opinion then that preferred shareholders and common shareholders have the same rights?

A Not always, but insofar as they object to an action that amounts to an improper divestiture of the company's funds, I think in principle the same answer should be reached regardless of the character of the shareholders.

May I also add this. I don't wish to give the impression that it is only where there is an oppression of the minority that the courts will interfere. If, as I indicated early, if the directors themselves had been in breach of their obligations to the company, that in itself would be sufficient to enable a derivative suit to be brought if what the directors did is incapable of ratification by the majority and this doctrine of oppression of the minority usually arises where the shareholders have in fact purported to ratify or take regional action purporting to authorize what the dissenting shareholders objected to.

THE COURT: Excuse me here a moment.

Mr. Anderson, are you relying on a derivative theory on behalf of Vencap? You aren't, are you?

MR. ANDERSON: No, your Honor, not in those

terms. I think what I am relying upon is that the securities act aspects of this case establish that the memorandum or the course of dealings between IIT and Vencap are such that it should have been disclosed to the stockholder, IIT, either in advance that the company was going to have these significant amounts of money taken away, or parting the company from these amounts of money that there was an affirmative obligation to make a disclosure.

THE COURT: But you aren't claiming on behalf of Vencap, I take it?

MR. ANDERSON: Your Honor, prior to discovery in this case, I do not want to be foreclosed from a subsequent claim that there is a derivative action with which this court should deal.

THE COURT: I am not suggesting that I want to foreclose you. I just want to be sure I understand your present theory. I believe I understand it.

MR. ANDERSON: That there is a very good corporate law reason for stopping the drain.

THE COURT: Yes. It is not what we refer to as a derivative theory and is what we refer to because Professor Ziegel has sometimes used the word with a different meaning from the way we use it.

I understand that the people that are here for

my 4:30 appointment are all here.

I suggest that we adjourn at this point and if all goes well, I will be back in about 15 or 20 minutes.

(Recess.)

THE COURT: Gentlemen, I am sorry it took so long. As always, a 15-minute job takes a half hour.

MR. ORAM: I have no further questions of this witness.

MR. ANDERSON: And I have no further questions.

(Witness excused.)

MR. ANDERSON: Your Honor, I have handed up a proposed form of order modifying the temporary restraining order to eliminate the two lawyers as individuals and the firm and I have discussed this with Mr. Oram. The form of order, I would say is a kind of standard form of temporary restraining order still refers to agents servants and employees, but I want to clarify for the record that by having that language in, it is not my intention, and I do not believe it should be the courts, to restrict in any manner the activities of the two lawyers or their firm in representing any one of their clients in this case.

THE COURT: I still am expecting a form of order with respect to the relaxations, as we refer to it.

We will get that in due course.

MR. ORAM: Yes, your Honor, I guess that is my obligation. I will see if I can have it tomorrow morning.

THE COURT: Of course it is on the record already. It is just as a matter of form that I think we ought to have a piece of paper.

MR. ORAM: I will take care of that.

THE COURT: You know what I am talking about?

MR. ORAM: Yes, I do.

MR. MORSE: Plaintiffs call Robert Cassel.

R O B E R T T. C A S S E L, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORSE:

Q Where do you reside, Mr. Cassel?

A 19 Seaman's Road, West Orange, New Jersey.

Q Mr. Cassel, are you testifying today pursuant to a subpoena served upon you?

A Yes, I am.

Q By whom are you employed today?

A American National Bank & Trust.

Q In what capacity?

A Vice president and trust officer.

Q Were you so employed during the period September through October of 1972?

A Yes, I was.

Q Would you describe what a trust officer is?

A Well, in the trust department we handle securities of either individuals or corporate accounts. My job would be to handle a certain number of these accounts.

Q Was one of the accounts you handled an account in the name of IIT?

A Yes, it was.

Q What type of account was it?

A It was a custodian account.

Q Was it not a sub-custodial account?

A Well, the technical term for it was a sub-custodian account. We were acting as sub-custodians of Montreal Trust Company.

Q Where are they located?

A In Montreal, Canada.

Q How many IIT accounts were there at your bank during the period September through October, 1972?

A There was one account, one custodian account.

THE COURT: Is it custodian of cash or securities?

THE WITNESS: We were strictly custodian of

securities.

Q As custodian of securities, would it be your duty to buy and sell securities for IIT?

A Yes, it was.

Q Was that pursuant to anyone's instructions?

A That was pursuant to the original agreement between the bank and Montreal Trust Company.

Q From whom did you receive instructions to buy or sell securities?

A I believe they came -- they were confirmed by Montreal Trust Company as custodian, primary custodian. The order themselves came from London and Dominion Bank.

Q Did you seel these securities when you were ordered to sell securities through brokers?

A Yes, we did.

Q Did you choose the brokers?

A No, we did not.

Q Who did?

A They were given to us from London and Dominion. That was part of their instruction.

THE COURT: Anybody in London and Dominion that you particularly dealt with?

THE WITNESS: I would have no knowledge of that, your Honor.

THE COURT: Any one individual?

THE WITNESS: Not to my knowledge.

Q Were these brokers located within the city of New York?

A For the most part, yes.

Q When you sold a security for the benefit of IIT, I assume as you sold it through a broker, the broker received payment for it. Where did the payment go?

A On the sale of a security, we received the cash and deposited it immediately into a checking account for ODB Luxembourg.

Q And this checking account was in your bank?

A At American National Bank.

Q Did your bank maintain an account at the Chemical Bank for clearing these sales, transferring the money?

A Just as a convenience there was an account at Chemical where we did clear some sales.

Q And this Chemical account was located in Manhattan?

A That is correct.

Q I may for the convenience of both of us and perhaps for the Court refer to the Overseas Development Bank Luxembourg as ODB and the Luxembourg Commonwealth Bank as BCB.

Did they have an account at your bank?

A Yes.

Q What kind of account was that?

A A correspondent account.

Q What is that?

A It is similar to a checking account for an individual except that the bank itself maintains an account with us.

THE COURT: Were those your only relationship with BCB?

THE WITNESS: We had another relationship not connected with IIT with BCB.

Q Was the BCB account at your bank the type of account whereby if money was deposited into it, it could have been transferred direct to Nassau in the Bahamas?

MR. BROWN: If your Honor please, I realize that the gentleman may feel some of this testimony is really procedural by way of background but I would object to the form of the questions as sometimes it doesn't save time.

THE COURT: I think, Mr. Brown, I agree with the general proposition but so far it seems to me he has been going about as expeditiously as he can. I am not sure I understand your objection.

MR. BROWN: If your Honor please, what I am saying

is,while I realize some of these questions are procedural in nature to hurry up to give a background, I think the last question asked by the attorney for the plaintiffs is a leading question, and it was improper as to form. It contained the answer to the question in the question. One of the issues in the case has to do, at least as framed by the plaintiffs, is the transfer of funds between New Jersey and Luxembourg and the Bahamas and I don't think a question on direct examination should contain an answer in it as to where it was transferred.

THE COURT: I will have your problem in mind. I thought the last question, although leading was not improper. I have reason to believe that this witness has some notion of what the issues are and if not in this matter, at least in related matters, and I think he is not likely to be led inadvertently into incomplete answers. However, Mr. Brown, I will have to rely on you, and I assume you will let me know every time you think he is being improperly led, but there is no question in my mind that the questions up to this point have been largely leading questions and some of them may have been improper. In my view it has been all right. Of course I respect your right and your duty to let me know.

MR. MORSE: Do I take your Honor's ruling to

mean that the witness is allowed to answer the question?

THE COURT: Yes.

THE WITNESS: Would you repeat the question?

(Question read.)

A Yes, that is correct.

Q As trust officer of American National Bank, were you the person most responsible for maintaining the records of the IIT subcustodial account at your branch?

A That is correct.

Q Let me show you a bunch of documents stapled together and ask you if you can identify what it is?

THE COURT: Does counsel have a copy of this?

MR. MORSE: No. This is the only one and we will mark it and Xerox all of these things.

THE COURT: Has Mr. Brown seen it?

MR. MORSE: Yes, he has.

MR. BROWN: Are those the statements of account?

MR. MORSE: Yes.

THE COURT: If these were consecutive, they would be the statements of the account of International Investment Trust from the inception to October 27, 1972.

MR. MORSE: I offer in evidence the copies of the account of IIT from inception through October 27, 1972

as Plaintiffs' Exhibit 19.

MR. BROWN: If your Honor please, I have one objection and then I would like to voir dire the witness as to the balance of the objection.

The first objection is that these documents purport to summarize in a custodian account maintained by the AMBT transactions relating to ITT securities. As such, obviously unless there is a connection, they are not binding on Mr. Pistell, Vencap or any of the subsidiary or affiliated companies of Vencap. They may be binding on defendants who are not before this court, so they are subject to connection.

Secondly, your Honor, I would like to voir dire the witness.

THE COURT: Before we get to the voir dire, I think your objection is to say the least interesting.

What is the purpose of this offer? I take it from what Mr. Brown says, these papers include many transactions or at least some transactions which have nothing to do with Vencap or Mr. Pistell.

MR. MORSE: As your Honor is aware, there were numerous sales of securities going on during this period, IIT securities being sold, transferred into cash then something being done with the cash.

THE COURT: What has that to do with the problem before us?

MR. MORSE: It is our contention that at least $3 million worth of these sales eventually found theeir way down to Vencap and were going to attempt to show that $3 million left the IIT custodial account and ended up in Nassau in the Bahamas in Vencap and back came a stock certificate.

THE COURT: You aren't going to trace dollars, are you?

MR. MORSE: No. We are just going to put in the accounts and start tracing the specific instructions with reference to this particular transaction.

THE COURT: I would suppose there can't be any dispute, Mr. Brown, that IIT sold securities and took in at least $3 million in cash.

MR. BROWN: No, your Honor, but I think --

THE COURT: I don't know that we need all these papers in evidence.

MR. BROWN: I think what is important here, your Honor, as I read the complaint, the allegation is that Mr. Pistell and other defendants entered into a conspiracy to remove, to cause the sale of $3 million, it says so in the complaint, of blue chip securities to cause their

removal outside the country from this bank; the conversion of those securities into cash and to secret them afterwards.

This document here merely shows your Honor that IIT through London instructed, and all of the documents, instructed this bank as custodian to transfer funds. The custodial accounts themselves merely show the sale of securities and there is no suggestion there can be any particular $3 million sale of securities which was subsequently converted into these funds.

Unless they want to amend their complaint, your Honor, I think we have to operate under the allegations --

THE COURT: If you want to go back to the complaint, Mr. Brown, the charges that Mr. Pistell and others conspired to sell all or most of IIT's readily marketable securities.

MR. BROWN: There are specific allegations, your Honor, such as on page 6, at the top of the page and thereafter, those are more limited specific allegations --

THE COURT: I don't know that they restrict the first allegation. I think they are just specific.

I think I will overrule your first objection, Mr. Brown. I am not entirely clear as to what I am going to do with this exhibit but I will overrule your objection.

Now you said you had some voir dire?

MR. BROWN: The purpose of the first objection which your Honor has overruled was merely that if the Court is inclined to take this, to take it subject to the plaintiffs' connecting Mr. Pistell with instructions or a conspiracy with the defendants to remove and sell these securities. I mean, absent that there is a different ball game, we don't belong in the case.

THE COURT: Of course I will take it subject to that, Mr. Brown and as you know, everything that is introduced here with respect to Mr. Pistell's participation in a conspiracy has got to be subject to connection.

MR. BROWN: I think the second one which perhaps I can dispense with were stipulations by counsel, is my point that none of these documents show there was a specific sale of three or $4 million of securities as such and that the proceeds of those securities, those specific traceable three or $4 million of marketable securities wound up in Vencap.

If you can agree to that, I will sit down for the moment.

MR. MORSE: I don't think we have any burden to show that specifically $3 million worth of securities were sold on October 3rd and that same $3 million came right

through.

THE COURT: I don't think you do, either. It doesn't seem to me, Mr. Brown, that Mr. Morse has to show that somebody at some time sold some stock which was worth approximately 3 million and it was that 3 million that we are now talking about.

MR. MORSE: In fact, your Honor, it was a $4 million transaction, 3 million to Vencap and 1 million to some place else.

MR. BROWN: Perhaps I am misleading the complaint. I think this is an important point. I refer the Court to paragraph 31 which says on or about October 6, 1972, the conspirators caused IIT to transfer the 3 million of the proceeds from the sale of blue chip securities.

THE COURT: Yes and if what they mean by 3 million of the proceeds, they say the 3 million of the proceeds, if they mean by that an earmarked 3 million, then they have the burden to prove that.

MR. MORSE: We mean that $3 million out of the proceeds of sales of blue chip securities came through to Vencap; 3 million out of this mass sale.

THE COURT: I am inclined to agree with you, Mr. Morse. It seems to me whenyou say the 3 million you are referring back to the 3 million referred to in the preceding

paragraphs.

I don't think we need to spend any more time on this.

I will take this subject to the qualifications that I have indicated.

MR. BROWN: Thank you, your Honor.

xx (Plaintiffs' Exhibit 19 was received in evidence.)

Q Mr. Cassel, I show you another series of statements of account. Can you identify that?

A This is a copy of the statement of actifty for the International Investment Trust subcustodian account for the period September 28, 1972 through October 27, 1972.

MR. MORSE: I offer this as Exhibit 19-A for the purpose that this particular copy coming directly from the bank is a much better copy than the copy contained as part of Exhibit 19 and is duplicative, I realize, but it is also legible, completely.

MR. BROWN: If it is just a legible copy of what we were talking about before, of course I have no objection.

MR. MORSE: That is what it is.

xx (Plaintiffs' Exhibit 19-A was received in evidence.)

Q I show you a copy of a telex and ask you if you

can identify it.

A This is a copy of a telex sent to Mr. Lamboray at ODB Luxembourg. with a copy to American National and a copy to BCB. Would you like me to tell what is in the telex?

Q No.

Is that a document kept by your bank in the usual normal course of its business?

A Yes, it is.

MR. MORSE: I over this telex as Plaintiffs' Exhibit 20.

MR. BROWN: Your Honor, I have the same objection. I don't object to the introduction of bank records as such. It is just the objection as to the document being subject to connection.

I also would like to bring out 1 or 2 points on this document with respect to this witness on a voir dire.

THE COURT: Is it cross examination or voir dire?

MR. BROWN: Voir dire.

VOIR DIRE EXAMINATION

BY MR. BROWN:

Q Mr. Cassel, did I hear you testify this was a document received by the bank?

A This is a document received by the bank.

It is a copy of a telex sent to ODB Luxembourg.

Q In other words this document is --

A It is an original document but it is a copy. The context is a copy of one that was sent to Luxembourg.

Q It is a copy of London representatives of IIT and Overseas Development Bank in Luxembourg in which they favored your bank with a copy?

A That is correct.

MR. BROWN: I have no objection, your Honor.

xx (Plaintiffs' Exhibit 20 was received in evidence.)

BY MR. MORSE:

Q Referring to Plaintiffs' Exhibit 20, sir, when you received this telex, did you do or cause anything to be done at your bank?

A Yes. What we did when we received this was to set up an asset position in the IIT fund for the two call accounts that were referred to in the telex itself.

Q What do those call accounts refer to?

A One is a $3 million call account at BCB with a reference Vencap and the other is a $1 million call account at BCB with a reference Gulf Stream.

Q What is a call account?

A That is a liquid form of, you might say a CD and

the bank that places the account can withdraw it on a very short notice and still earn interest on the balance while it is held.

THE COURT: Why did you put Gulf Stream on this?

THE WITNESS: That was the instruction on the telex.

THE COURT: That is a different matter?

THE WITNESS: Yes.

MR. MORSE: It doesn't pertain to this case but it is a combined telex.

Q It is your testimony that you established an IIT account which was a call account?

A No.

THE COURT: May I see that, Mr. Morse?

Q What account did you establish?

A We established on the books of the IIT fund, we established a call account at BCB for $3 million with a reference Vencap.

Q Was this a bookkeeping entry?

A Yes.

THE COURT: I am not sure I see the date of this telex on here. Was it testified to?

THE WITNESS: That would be the date.

RT: October 6, 1972. Thank you, is that cor-

NESS: Yes, as far as I can determine it.
date as far as the telex itself is con-
é as of October 6th, that means
as of that day, so I assume that would
eived it.
you a copy of a letter dated October 4,
if you can identify that, sir.
s a copy of a letter addressed to ODB
to withdraw $4 million from the account
American National and transfer it to BCB.
etter confirms the telex that was just
nce, does it not?
s correct.
URT: So the telex must have been sent
of that letter, is that correct, or doesn't

TNESS: You can't really tell from that.
ave been sent out, since it was overseas,
nt out a day or two ahead of time.
OWN: I object to the form of the last
was, that letter confirms the telex that

rkbr Ca

THE COURT: T
I think my question dea
He just told us that it
telex because the lette
telex; is that right?
THE WITNESS:
THE COURT:
they related to each ot
MR
an attorney, your Honor
leading of a witness un
THE COURT:
isn't dated and a lette
have been sent later.
I take it, Mr
you are clear that the
same prcise subject ma
THE WITNESS:
THE COURT:
same time?
THE WITNESS:
THE COURT: Yo
THE WITNESS:
What the exa

That was the point of my question.

lt with your objection, hasn't it?

t doesn't necessarily confirm the

er may have been sent before the

That is correct.

s the point of your request whether

ther?

R. BROWN: With the risk one runs as

r, on direct examination there is

nnecessarily.

Yes, and we have a telex which

er which refers to a telex which may

r. Cassel,

telex and the letter relate to the

tter, is that correct?

Yes, they do.

And they were both sent about the

I would assume so.

ou assume so?

No, nothing exactly.

ct procedure was on this transaction,

our normal operating procedure would be that we would receive a telex which would be later confirmed in writing. The telex we received which was just entered into evidence was the same as an instruction given in this letter and the letter says confirming our telex value October 6, 1972.

THE COURT: This letter is dated October 4th?

THE WITNESS: Yes.

THE COURT: How can you confirm if a letter dated October 4th, a telex sent on October 6th. I suppose the way you do it is if you have a typist that misses the right key.

MR. MORSE: I think the witness testified that the value date means that the telex is effective as of October 6th. They may have sent it out a day or two before. I don't know that it really matters in this case.

Q Is this letter one such that the bank would keep in the regular course of its business?

A Yes, it is.

MR. MORSE: I offer in evidence Plaintiffs' Exhibit 21.

MR. BROWN: The same objection as before, your Honor. I wouldn't repeat them all. My position with

respect to all these documents, I wuld not testify the fact they are bank records but we see they don't connect us in any way to this case.

THE COURT: You have the conspiracy objection without raising it. I take it you will let me know if you question authenticity.

MR. BROWN: Yes.

(Plaintiffs' Exhibit 21 was received in evidence.)

Q Sir, directing your attention to the signature lines on Plaintiffs' Exhibit 21, can you identify those signatures?

A Yes. One is Raymond Fell and the other is Marjorie Sweeney.

Q Can you identify who Raymond Fell and Marjorie Sweeney are?

A Both are authorized signatures for the IIT fund.

THE COURT: Who do they work for, do you know?

THE WITNESS: I don't know specifically.

THE COURT: Do you know where they work, where they are located?

THE WITNESS: At that particular time, they were both in Nassau, the Bahamas. Mr. Fell travelled around. I understand Mrs. Sweeney or Miss Sweeney was stationed

there.

THE COURT: You don't know who they worked for?

THE WINESS: Not specifically, no.

THE COURT: Generally?

THE WITNESS: Generally they worked for an organization within the IOS Limited setup.

THE COURT: How do you know that?

THE WITNESS: In the agreements that we signed for the funds, their names were listed as authorized signatures and these agreements were signed by officers of the funds at that time.

THE COURT: Did you ever meet either of them?

THE WITNESS: I met Mr. Fell. I didn't meet Mrs. Sweeney.

THE COURT: Where did you meet Mr. Fell?

THE WITNESS: He was instrumental in getting the contracts transferred from Bank of New York to Bank International.

THE COURT You don't mean the IOS account?

THE WITNESS: The custodianship of the sub IOS funds. I put him in New York. He came to my office on a couple of occasions.

THE COURT: He didn't work for the Bank of New York?

THE WITNESS: No, not for any U.S. organization.

THE COURT: Who did you understand he was representing?

THE WITNESS: He was representing in this particular instance IIT as an authorized signature.

THE COURT: In connection with transferring from Bank of New York to our company?

THE WITNESS: The management of the investment or fund arm of IOS Limited is a representative of management.

THE COURT: Which arm?

THE WITNESS: To the best of my knowledge, it was Trans Global Financial Services but I am not in any way certain.

THE COURT: Where did you get that notion? Did he tell you that?

THE WITNESS: Specifically, I believe that was brought out at a previous hearing.

THE COURT: I am asking you now. Do you remember where you got that notion?

THE WITNESS:Yes, at the previous hearing.

THE COURT: You heard it in testimony?

THE WITNESS: That is correct.

THE COURT: Not from him?

THE WITNESS: Not specifically, no.

THE COURT: But you must have known he had some authority to act otherwise you wouldn't have dealt with him.

THE WITNESS: Yes, by reason of the fact he was included as one of the authorized signatures on the original agreement.

THE COURT: That is all you relied on?

THE WITNESS: That is correct.

BY MR. MORSE:

Q Do you know who Mr. H. Schmidt is?

A He is the officer in charge of our international department.

Q He is at your bank?

A At American National.

Q I show you a copy of a telex which bears value date today October 6, 1972 and ask you if you can identify it.

A This is a copy of a telex addressed to Mr. H. Schmidt from Overseas Development Bank Luxembourg and this one is dated October 6, 1972.

Q Is that a document, sir, which the bank would keep in the normal course of its business?

A Yes, it is.

MR. MORSE: I offer this in evidence as Plaintiffs'

Exhibit 22.

Q Before I do that, I know there is some handwriting along the side of the telex message. Can you identify whose handwriting that is?

A No, I cannot.

THE COURT: Is this a document you have seen before, Mr. Brown?

MR. BROWN: I just saw it here today, your Honor, a few minutes.

THE COURT: There is a lengthy list of documents marked for identification. I had hoped and assumed that everything that you had, Mr. Morse, you had shown to counsel in advance.

MR. MORSE: We showed this to counsel in advance of Mr. Cassel being called, but it was today. The documents that were premarked were documents that came in either on Mr. Pistell's prior deposition in another matter --

THE COURT: It seems to me at this time we don't need to concern ourselves with the the usual rules of discovery. Perhaps this is being pursued by counsel, this rule is being pursued by counsel. You ought to show each other everything you have ahead of time that you plan to offer in evidence and you ought to inform each other of the identity and the nature of the testimony of witnesses.

I am not sure that I have any reason to complain about this, but I just want to make my position clear.

MR. MORSE: Plaintiffs will comply with that position.

THE COURT: I hope you have been.

VOIR DIRE EXAMINATION

BY MR. BROWN:

Q Mr. Cassel, do you recognize the handwriting on this document?

A No, I do not.

Q Do you know where the original of that document is?

MR. MORSE: We would offer that document without the handwriting being considered because the witness doesn't know whose handwriting it is.

MR. BROWN: What concerns me, your Honor, is the notations in the margin. One says nto effective and the other one says October today, something like that.

THE COURT: I think if that is your only objection, I assume --not only assume, but I will take it without the handwriting unless somebody can tell me whose handwriting it is and what it means.

MR. MORSE: The offering of the document is without considering the handwriting.

THE COURT: Any objection?

MR. BROWN: Do you know whether or not it was customary for Mr. Schmidt, the head of the International Department of your bank to make notations on telexes which he received?

THE WITNESS: I would have no way of knowing that.

MR. BROWN: Are you familiar with his handwriting?

THE WITNESS: No.

MR. BROWN: You are not?

THE WITNESS: No.

THE COURT: Where did you get this document, Mr. Morse? This particular piece of paper?

MR. MORSE: From the witness, your Honor.

THE COURT: Did the document come from your files?

THE WITNESS: It came from the files of the international department.

THE COURT: This copy of it did? What I am suggesting is, there may be a real possibility -- I wouldn't suggest anything.

The document is being offered without the handwriting.

MR. MORSE: Yes, your Honor.

THE COURT: Is there an objection?

MR. BROWN: I object on this document as to authenticity. I think the Court will observe there is a question here as to where the funds emanated from that wound their way down into the Bahamas Commonwealth Bank. There is a question in the case about the revocation about this initial transaction.

THE COURT: What does that have to do with authenticity?

MR. BROWN: I think it is possible -- I don't know whether or not that copy is a copy of the original document. If it is an those words are on there, they may have some significance.

THE COURT: The handwritten words?

MR. BROWN: Yes. I am not trying to be sticky but I am trying to point out to your Honor it may have some bearing.

THE COURT: I think we ought to know what the handwritten words are if anybody thinks it is significant, but I am curious about the authenticity of the document. It seems to me it is clearly relevant and the witness has identified it so we have the question of authenticity. Do you contest the authenticity? If you do, I am going to overrule you. It came from his file.

MR. BROWN: The witness testified it came from his

file, it is a bank record and it so happens it is a copy. If it is a true copy, the copied handwritten notes which may have a definite bearing on some of the transactions.

THE COURT: I think your point is a good one. We will receive the document subject to further objection if and when there is any further evidence about the handwritten notes in the margin on the left-hand side of the document.

I am sorry, Mr. Brown, I didn't understand your objection.

(Plaintiffs' Exhibit 22 was received in evidence)

Q Plaintiffs' Exhibit 22 is a telex from Overseas Development Bank, Luxembourg to Mr. Schmidt, an officer of your bank, is it not?

A That is correct.

Q Directing your attention to the third paragraph of the telex, does it direct your bank to take any action?

A Yes, it does.

Q What action is that?

A It directs us to deposit $4 million to BCB Nassau in a new interest bearing account designated ODB Luxembourg for the account of IIT reference VXncap, $3 million.

Q Did you or somebody under the bank's direction and control pursuant to these directions transfer $4 million from the ODB account into such a new account?

A Yes, we did.

Q I show you a copy of a telex dated October 18, I believe October 18 and ask you if you can identify that, sir?

THE COURT: Has that been pre-marked?

MR. MORSE: None of these documents have, your Honor, but I only have four more.

THE COURT: Can you pre-mark all of them right now or do you want to do it one at a time? While the witness is reading this, we can have them pre-marked.

MR. MORSE: Ultimately I will offer the Vencap securities. The bank has requested that we not mark the original but we mark a copy so the original can be returned to the bank's vault.

THE COURT: That is agreeable.

(Plaintiffs' Exhibits 23 through 29 were marked for identification)

THE COURT: Mr. Brown, do you have objection to all of these documents just marked for identification being offered at the same time and the second question, do you have any objection to a copy of that certificate

rather than the original being offered?

MR. MORSE: Your Honor, not only are we offering a copy of the certificate, but of the warrants and a subscription agreement and a blank stock power, all of which are contained with the original that the bank wants back.

MR. BROWN: Our position is they don't have anything to do with Mr. Pistell. The only one I would have a question of. I don't have any objection to 26 being a copy. That is the so-called charge slip --

THE COURT: I think the one they raised a question about was the certificate which the bank wants to keep the original of.

MR. BROWN: They are entitled to it. We have no feeling about it.

The only one that I do raise a question about is 25. It has the words "Wait for Further Instructions".

THE COURT: Written on there?

MR. BROWN: Yes.

MR. MORSE: I intended to ask the witness if he knows whose handwriting it is.

MR. BROWN: Subject to that, I have no objection to the authenticity of the documents.

THE COURT: We will receive them all and

subject to the usual objection.

(Plaintiffs' Exhibits 23 through 29 inclusive, were received in evidence)

xxx

BY MR. MORSE:

Q Directing your attention to Plaintiffs' Exhibit 23 in evidence, this is a telex between your bank and ODB Luxembourg, is it not?

A Yes, it is.

Q It purports to advise them of transactions in their account at your branch.

A That is correct.

MR. BROWN: If your Honor please, reluctantly, the documents unless they are ambiguous and counsel claims they are, speak for themselves. They are bank records. I see no purpose in having the witness explain and read verbatim exactly what is on the documents.

THE COURT: I don't either, Mr. Brown. On the other hand, I assume that Mr. Morse is trying to short-cut by asking some preliminary questions which will lead to another question.

I think Mr. Morse, there is obviously no point in your getting the witness to tell us what the document is when we can all see it. However, if you are about to ask another question based on what you just

said, I think it's all right.

MR. MORSE: I was trying to establish clearly for the record what this document was.

THE COURT: If there is a question about it, of course you are entitled to do it.

Q The word "trustworthy" at the bottom of this. Is that a signature of some sort?

A That is a code for our bank.

THE COURT: That is a code for your bank?

THE WITNESS: It is more like a sign off code. "Trustworthy" was the one used in Morristown and we used American PAPI, which is American Parsippany. It is not really a code in the sense that it is secretive.

Q I show you Plaintiffs' Exhibit 26 in evidence and ask you if you can describe what it is, directing your attention just to the top one of three identical type documents, only the top one of which is marked in and offered in evidence.

A The top item is a copy of a debt ticket addressed to ODB Luxembourg instructing them or telling them that we transferred to BCB in a new interest bearing account designated ODB Luxembourg the reference Vencap $3 million and Gulf Stream $1 million for a total debt of $4 million.

Q I know that it says BCB Nassau. Does that indicate any particular local for the BCB account?

A I wouldn't know that.

Q Is that because you are not the proper person at the bank to answer that question?

MR. BROWN: If your Honor please, I find that question objectionable as to form.

THE COURT: Sustained.

Q Do you know if there was another designation for the BCB account at your bank in New Jersey?

A Our bank only had the one account in this sense for BCB.

Q I mean, as a bank officer reviewing documents, account transfers involving BCB, was there a different designation other than BCB Nassau for the account located at your branch in New Jersey?

A Not to my knowledge.

Q Was its designation BCB Nassau?

A As far as I know, yes.

Q On Plaintiffs' Exhibit 25, can you identify the author of the handwritten notation appearing on the right-hand side of the exhibit?

A No, I cannot.

Q Did this telex go to you or to somebody in your

department?

A This went to someone in my department.

Q Did you see that telex when it came in?

A No, I did not.

Q Were you informed that a telex purporting to give this information came in at that particular time?

A Not to my recollection, no.

Q Does this telex mean anything to you other than just a series of dates, numbers, things like that on it?

A Yes. This telex sets up a code for setting up an asset in the IIT account.

Q What is the asset that they set up? By mean set up pursuant to the telex.

A 30,000 Vencap redeemable preferred six percent.

THE COURT: There is a code word gielat. Do you know what that means?

THE WITNESS: No.

THE COURT: This came from whom?

THE WITNESS: Actually that telex came from our Morristown office to our Parsippany office. The telex was received by Morristown from I believe Fund Service in Toronto.

THE COURT: What is Fund Service?

THE WITNESS: That is the branch of Montreal Trust which handles the custodianship of mutual funds.

Q I show you Plaintiffs' Exhibit 24 in evidence which is a telex from Bob Brennan to Ian Rowe and I ask you to identify Bob Brennan.

A Bob Brennan is one of the associates, one of my associates who worked on the IIT fund.

Q Do you know who Ian Rowe is?

A He is the cash manager of INCAP.

Q What is INCAP?

A INCAP is the investment advisor to the funds.

Q To IIT?

A That is correct.

THE COURT: Located where?

THE WITNESS: In London.

Q I show you Plaintiffs' Exhibit 27, 28 and 29 together which are copies of the stock certificate for 30,000 preferred share of Vencap, a warrant agreement for 30,000 shares and a subscription agreement.

Did there come a time when the originals of those documents came to your bank, sir?

A Yes, they did.

Q From where did the originals come, if you know?

A These originals were brought to the bank by Raymond Fell.

Q I believe you previously identified Raymond Fell as a person working someplace in the IOS structure.

A That is correct.

Q Do you have any independent knowledge as to where Raymond Fell got the originals?

A My understanding is that he received them from the Bahamas Commonwealth Bank, BCB.

Q In Nassau?

A In Nassau.

MR. BROWN: I would like to object to hearsay testimony.

THE COURT: What is your understanding based on?

THE WITNESS: At the time that these certificates were delivered to the bank, Mr. Fell also delivered some other securities that were held for us in other accounts at BCB and his explanation was that he received these, these certificates at the same time that he received the others.

THE COURT: They weren't delivered to you personally?

THE WITNESS: They were delivered to our bank,

to our vault.

THE COURT: But not to you personally?

THE WITNESS: No.

THE COURT: How do you know they came from Mr. Fell, somebody told you?

THE WITNESS: He delivered them.

THE COURT: But how do you know he did? How do you personally know that he personally delivered them? Did he give them to you?

THE WITNESS: He did not give them to me, your Honor.

Q Did you see Mr. Fell deliver them to somebody?

A No, I did not. I believe he called before he came and told me that he would deliver them.

THE COURT: Told you?

THE WITNESS: Told me, yes.

Q Then the next time you looked, the securities were there?

MR. BROWN: May we have a holdup on the questioning until your Honor, after reviewing the documents makes a ruling? Mr. Fell is not a party to this case. I don't know that the branch of OIS he works for is a party to this case and none of the statements attributed to him should be binding on any of the defendants

who we represent.

THE COURT: I think that is right.

My principal interest in the present question about these documents, however, is whether or not they are authentic.

I see one of them is signed by David Taylor. One of them isn't signed by anybody and the third one is signed by, it looks like Mr. Pistell's signature.

MR. BROWN: Wk are not questioning authenticity. All we are questioning is the fact -- all we are questioning is the fact that we have a case where other defendants who are possibly outside the jurisdiction, maybe difficult to serve, difficult to make parties to this case, we don't want to be charged for their sins if any, nor the testimony of employees of theirs.

If they are not before the Court, they can't be cross examined and I think this relates to a jurisdictional point. We are not questioning the authenticity of these documents.

THE COURT: If all you are doing is questioning jurisdiction at this point.

MR. MORSE: If your Honor would like, we could hand up to the Court the originals.

THE COURT: I take it that isn't Mr. Brown's

problem.

MR. BROWN: I consented to the authenticity of those immediately.

THE COURT: I will receive these documents. I am not quite sure what your objection is, Mr. Brown. Assuming it is not authenticity and you are not objecting to the fact these are copies rather than originals, 27 is a Vencap document and I can't read the name of the vice-president who signed it but Mr. Taylor signed it as assistant secretary. 28 is a Vencap document, warrant to purchase redeemable preference shares which is signed by Mr. Pistell and attested to by Mr. Murphy and 29 is a document that is not signed by anybody which apparently was addressed to Vencap by, I suppose, IIT.

If you are not questioning authenticity --

MR. BROWN: May I see 29, your Honor?

THE COURT: It seems to me they are all relevant and admissible. I will, of course, take them subject to your continuing objection.

MR. BROWN: This relates, your Honor, not only to jurisdiction, but also with respect to the securities laws. We didn't ask the bank in the Bahamas to transport them up here. I think that is a matter for their proof and our proof, your Honor, would be to show

that this case does not belong to be covered under the United States securities laws.

THE COURT: You aren't waiving anything, Mr. Brown. Your jurisdictional point goes without saying.

We will receive these.

What about 29 which is not signed by anybody? Do you have any question about the authenticity of that? Is that a valid document? Did it come into existence?

MR. ANDERSON: Your Honor, if I might explain the substance of 29. That is a document IIT would execute if it would ever call upon the second 3 million. So it was not supposed to be signed.

MR. BROWN: It's a form of subscription agreement, your Honor.

THE COURT: They are received subject to the comments I have made.

(Plaintiffs' Exhibit 23 through 29 were received in evidence)

THE COURT: That would be from IIT to Vencap if the other 30,000 warrants, the warrants as to the other 30,000 was executed, is that right?

MR. ANDERSON: That is correct, your Honor.

Q Is there any doubt in your mind but that the

originals of Plaintiffs' Exhibit 27, 28 and 29 were delivered to your bank in New Jersey?

A No, there is nothing.

MR. MORSE: No further questions.

CROSS EXAMINATION

BY MR. BROWN:

Q Mr. Cassel, prior to today did you know the defendant Mr. Pistell?

A No, I did not.

Q Did you have any communications in any respect with Mr. Pistell?

A Not to my knowledge.

Q Vencap?

A Other than what you see before as evidence.

Q Those are communications to other banks and to IIT. They are not communications with Vencap.

A Nothing whatsoever with Vencap.

Q And you had no communications with Intervent or Intercap?

A Are you referring to INCAP?

Q No.

A No.

Q Would it be accurate to say that at no time did your bank receive instructions from Vencap, Intervent,

Intercap, Mr. Pistell concerning any stock held in custodial account of IIT?

A That is correct.

Q At no time?

A That is true.

Q Would it also be true at no time did any of these defendants whose names Ijust mentioned instruct your bank to cause the sale of any of these securities?

A Never.

Q That is perfectly clear from the documents you produced and from your knowledge of this account?

A Yes, it is.

Q Have you had an opportunity to review the complaint in this action, sir?

A No, I have not.

Q Who gave the bank instructions to sell securities out of the IIT account?

A These basically would be instructions from Montreal Trust, the primary custodian, relayed through London and Dominion.

Q When for the first time did you bank become, as you will, sub-custodian of these funds after they were transferred from the Bank of New York?

A At what point in time?

Q Yes.

A I would say it would be in the middle of August, 1972.

Q Would you accept my representation if I said that some of the custodial records suggest July?

A There may have been a few assets received at that point. The middle of August was the main turnover from Bank of New York.

Q Do you have any knowledge as to the activity that occurred while the Bank of New York was the custodian for the IIT account?

A No, I do not.

Q Have you examined and reviewed these records which are identified as Plaintiffs' 19 and 19-A, both during the course of your duties as the person in charge of this account and prior to coming down here today to testify?

A Yes, I have.

Q Would it be fair to state, sir, that these accounts reflect that substantial amount of sale of securities both prior to, as well as subsequent to October 9, 1972?

A Yes, they do.

Q Tens of millions of dollars both before and

subsequent, isn't that a fact?

A That is correct.

Q I think you testified, Mr. Cassel, that ODB, the Overseas Development Bank of Luxembourg had an account in your bank, is that correct?

A That is correct.

Q What was the nature of the contract maintained there by ODB?

A The accountained by our bank was basically a corporate bank account. It differed only in the sense that ODB Luxembourg was the cash depositor for the IIT fund.

Q So that if I understand you correctly, the relationship was in effect twofold: Number one, you acted as a corporate bank for the United States dealings of ODB and number two, they could incidentally also happen to be the depositor for IIT cash fund.

A That is correct.

Q And you handled other transactions for ODB unrelated to IIT, is that correct?

A That is correct.

Q Did you know, sir, as of the time frame we are talking about here, August, September, October 1972, approximately what the overall asset picture was for IIT

in terms of cash and securities wherever held?

A The overall picture, no, I have no complete knowledge of that.

Q Were you aware of the fact in your custodial account they had in excess of $100 million cash or securities?

A I am not aware of that.

Q You have familiarized yourself with these records, have you not?

A These are records of the trust department as custodian of securities, not necessarily of cash custodian.

Q Isn't there a reference in here to $99 million being the proceeds of the sale of securities, somewhere in here? You are probably more familiar with it than I am.

A Yes, that is right on -- I have it here.

Q Would that indicate to you --

A There were transactions of $99 million.

Q Have you ever seen a prospectus or any other document relating to that fund IIT?

A Yes, I have.

Q Were you aware they may have had securities and other assets in various European locations?

A Yes, I was aware of that.

Q Would it be fair to state to your knowledge that their assets might well have been in excess of $200 or $300 million to this point in time?

A To my knowledge, they were.

Q Was their principal bank to your knowledge which disbursed funds and handled the inflow of funds, the ODB Bank?

A Yes, it was.

Q Do you know whether or not IIT in October of 1972 maintained cash balances at the Overseas Development Bank's main office in Luxembourg?

A That, I don't know.

Q Would you be surprised if they did?

A No, I wouldn't.

Q Did they maintain cash balances at your bank, ODB?

A Yes, they did.

Q Can you tell by looking at that transcript what the status of the ODB cash account was during any particular month from August to November of 1972?

A No, I cannot. This is a statement of the IIT fund, not of the ODB Luxembourg.

Q Were you requested in the subpoena to bring

down all relevant documents here today?

A Yes, I was.

Q How is it you didn't bring down the ODB account?

A I was served with the notice noon Friday and I understood that counsel for the plaintiff had copies of all the documents that would be required with the exception of the original certificate.

MR. BROWN: May I direct a request to counsel, your Honor, and that is, do you have copies of the transcript of the ODB cash account?

MR. MORSE: We never requested that pursuant to the subpoena and we never received it and doesn't have it.

MR. ANDERSON: Furthermore, without triple-playing this, your Honor, you will recall the colloquy on Friday when the bank was excused. There was an indication as to the documents that we were particularly interested in at that time. That did not include ODB Luxembourg cash accounts.

Q Do you know whether or not ODB maintained cash balances in its account in your bank in August, September, October, November and December, 1972?

A Yes, they did.

Q Can you give us any idea or approximation as to what the size of the average balances were during that period of time?

THE COURT: This is all of '72?

MR. BROWN: Yes.

THE COURT: ODB Luxembourg?

MR. BROWN: Yes. It maintained an account.

THE COURT: I understand the question. I am not quite sure where you are going with it.

A I don't know what the average would be. I know the balance ranged from anywhere from $1 million up to $50 million.

Q Would that range have been true throughout that period irrespective of what the balance may have been on any particular day?

MR. MORSE: I don't understand that question. Do you mean, did any given day have a range like that or what?

Q Do you understand the question?

A Yes.

THE COURT: When you answer the question, Mr. Witness, please restate the question in your answer so we will be sure we know what you are talking about.

Do you understand me?

THE WITNESS: Yes.

A The ODB Luxembourg cash account balance ranged between $1 and $50 million for the months of September and October. Beyond that or before that, I would have no knowledge.

Q Did there come a time when funds to your knowledge were transferred from the custodial account of IIT to the ODB account?

A Yes.

Q And that was approximately October 5, 6, 7.

A That was our standing instruction.

Q Would it be fair to state at the time those transfers occurred of the $4 million or $3 million and the $1 million together, the ODB account had a substantial amount of cash in it to begin with?

A Yes, that is correct.

Q Would it be fair to state, sir, from your knowledge of the records, the review of the correspondence, no instructions with respect to the sale of securities -- with respect to the transfer of the $4 million from the custodial accounts of the ODB account and the transfer out to the Commonwealth Bank in the Bahamas, none of those instructions emanated from the United States; is that a fair statement?

A To my knowledge, none of them did.

THE COURT: Mr. Brown, help me with a problem that I have.

What difference does it make to us whether or not the ODB Luxembourg account at AMBT had a million dollars in it or $50 million in it? I am not sure what the significance of that is. I must be missing something because you are putting emphasis on it.

MR. BROWN: I think I am trying to establish two things, your Honor. Number one, that none of the transactions being complained of occurred in the United States. All of the instructions --

THE COURT: That I can understand

MR. BROWN: The other thing is, it is alleged that there were a sale of securities and now I gather from the plaintiffs' position, it is not just $3 million, but hundreds of millions of dollars of securities --

THE COURT: All we are concerned about at the moment really is the $3 million.

MR. BROWN: -- in a conspiracy, and that those funds --

THE COURT: Although I suppose we are concerned with the plaintiffs' charge that there was a conspiracy to sell many millions more, yes.

MR. BROWN: And that those funds were indeed the sale of the blue chip securities, and this is one of the wrongs complained of, were converted into this interior recommendation type description of the activities of Vencap.

I am trying to establish for your Honor it is not the defendants' case but the plaintiffs' case which is speculative because if ODB had $10, $20, $30 million dollars in its account cash and those funds may not have related to the sale of securities or the securities being complained of here. They have alleged it, it is in their bill of particular.

I am raising a question about it, your Honor, and which like everything else, we have to speculate about because we weren't there, but I think it's a valid point. I think they have charged themselves with the duty of proving that Mr. Pistell and others instructed and caused IIT to sell blue chip securities and take those funds and in part bring them down to Vencap.

That is there burden, your Honor. I am trying to show the Court there are other sources from which those funds could have come laying at rest which may not have been the result of the sale of other securities.

THE COURT: I guess it is agreed, is it not,

that IIT did put $3 million into Vencap.

MR. BROWN: No issue, none, but if I may say so, your Honor, if you don't have that connection with the American securities law, you may not have a case in this court. They would have to go across the street.

That is why with the Court's indulgence I am going into this a little bit.

THE COURT: I wasn't saying that I didn't think you should, Mr. Brown. I just wanted to be clear that I understood what you were getting at.

I would like to take two or three minutes.

(Recess)

BY MR. BROWN:

Q Mr. Cassel, I think we have established that the instructions regarding the transfers of the accounts came from places other than the United States,is that correct?

A That is correct.

Q You put in a charge slip as an exhibit which is a debt to the account confirming the transfer of these funds, is that correct?

A That is correct.

Q What personal knowledge do you have that the $4 million which was transferred to BCB resulted from

the sale of blue chip securities?

A Absolutely none.

Q Do you have any knowledge, sir, as to whether or not $3 or $4 million was transferred from Luxembourg by the Overseas Development Bank for Vencap to Commonwealth Bank in the Bahamas?

A That they transferred it directly -- that ODB transferred it directly to BCB?

Q Yes, sir.

A I have no knowledge of that.

MR. BROWN: May we have this marked, please.

(Defendants' Exhibit L was marked for identification)

Q Can you tell me, sir, from your familiarity and knowledge of banking procedures what that document purports to be, type of document?

A This is a credit ticket from Bahamas Commonwealth Bank.

Q Is there anything on that credit ticket, sir, which would indicate whether the funds came from your bank or from Luxembourg?

A No, there is nothing on this ticket that would indicate that.

MR. BROWN: If your Honor please, I would like

at this time offer in evidence this ticket which is a receipt, full, for the $3 million received by Vencap. I will connect it with Mr. Pistell and Mr. Taylor when they testify.

MR. MORSE: No objection, subject to your proviso you are going to connect it somehow.

(Defendants' Exhibit L was received in evidence)

THE COURT: I am not sure I understand your question, Mr. Brown. Did I understand you to ask him if there was anything on the ticket which indicated where the funds came from?

MR. BROWN: Yes, sir.

THE COURT: Your answer Mr. Cassel was "No"?

THE WITNESS: That is correct.

THE COURT: But it says transfer of funds for ODB Luxembourg to open new TD account. What is that?

MR. BROWN: Time deposit.

THE COURT: But it says transfer of funds from ODB Luxembourg. Does that indicate where the funds came from?

THE WITNESS: I thought the question was whether the funds came from American National.

THE COURT: You answered you didn't see anything on the face of this to indicate the answer to his question.

Do you know where the funds came from?

THE WITNESS: According to our deposit and credit tickets, they came from the account at American National for ODB Luxembourg for the credit to the account of American National of BCB.

Q Do you know that the $3 million or $4 million which your records reflect as having been transferred at your instructions out of the ODB account to the bank, were indeed the funds that paid for the Vencap stock?

A No, I do not.

THE COURT: Why do you use the figure $4 million? The ticket says $3 million.

MR. BROWN: If your Honor please, I think some of the documentation has shown $3 million for Vhncap and $1 million for Gulf Stream and while the funds may be a mystery as to where they emanated from, our point in bringing this out, your Honor, is solely -- we had no idea where the funds were coming from, did not instruct their transfer, et cetera.

THE COURT: All right.

Q Was there, from your knowledge and review of

the records, sir, any time in which any portion -- which your bank received any instructions to revoke, change or cancel any portion of this transactio?

A Yes, we did.

Q Would you tell us what that was?

A As far as our end of it or my end of it is concerned, again as I testified before, in the trust department we were acting as custodian of the securities. When we received the original instruction for this transfer, the call accounts were with setup as assets on our file and since we were not cash depositor, there was no reason for those assets to be set up.

We inquired of Fund Service and asked them to cancel our setup order or purchase order so we could delete the call accounts from the list of assets for the IIT fund.

Q Could you possibly clarify that? I don't think I understand you from my own ignorance of banking practices.

A The $4 million, or if we want to stick to the $3 million for Vencap, was labeled a call account.

Q Which is a cash account?

A Which is a cash account. It is not an asset as such although it is earning interest, but it is not

considered an asset as far as the fund is concerned.

As far as our custodian agreement is concerned, it was mistakenly set up when we first received the telex as an asset.

Q In other words, the sum and substance of this is, rather than reflecting the $3 million coming out of a custodial account for securities, it came out of a cash account called a call account, is that right?

A Well, are you talking about the original transfer of $3 million?

Q The ultimate transfer.

A That came out of a corporate account.

Q A cash account of ODB Luxembourg?

A A corporate account at AMBT for ODB Luxembourg, correct.

Q Were you familiar, sir, with some point in time in 1972 that the Securities and Exchange Commission commenced a lawsuit against Vesco and various other defendants?

A Yes, I am familiar.

Q By looking at any of the records which you brought, can you tell us when the Vencap shares were sent to the United States and received by your bank?

A Yes.

On February 7, 1973, I received 30,000 Vencap redeemable preferred shares, 30,000 Vencap warrants, those two securities.

Q So that would have been the number of months subsequent to your knowledge of the commencing of that suit?

A Yes, that is correct.

THE COURT: That was about four months after the sale, after the IIT transaction?

THE WITNESS: That is correct, your Honor.

THE COURT: Why did it take four months, do you know?

THE WITNESS: The securities as I testified before were held at CBC for another account, another fund that we managed or were custodian of, rather, that BCB also held some of those securities. We requested that bank to transfer what they had to us for I believe it was the FOF Prop Fund and the growth fund.

Along with those securities, Vencap and I believe two other items came which belonged to the IIT fund which were also held at BCB. We put those under our custodianship for IIT.

THE COURT: Weren't you supposed to be the custodian of those securities?

THE WITNESS: For IIT we were sub-custodian for Montreal Trust for United States securities. As I understand it, this is not a United States corporation.

THE COURT: Who was supposed to be the custodian of those securities?

THE WITNESS: I have no knowledge of that. Montreal Trust was the prime custodian.

THE COURT: Why did you finally get them?

THE WITNESS: They came to the United States, to us, rather, with the other securities we requested for the other two funds.

THE COURT: You did not reque: them?

THE WITNESS: We did not. They were just delivered and as I recall Montreal Trust requested we hold them for them.

THE COURT: So you are still holding them?

THE WITNESS: Yes.

THE COURT: At the request of Montreat Trust?

THE WITNESS: At the request of Montreal Trust.

Q I would like to show you this document which came from the files you produced pursuant to subpoena and ask you to identify it for the record, please.

A This is an order to receive securities from

IIT Management Company.

Q Securities that you have testified to?

A 30,000 shares of Vencap Limited preference shares.

Q What is the date on that order?

A The date is February 6, 1973.

MR. BROWN: I would like to offer this in evidence, your Honor.

MR. MORSE: No objection, your Honor.

(Defendants' Exhibit M was received in evidence)

Q May I show you this document also from your files which was produced and ask you if you can tell us what that purports to be.

A This is a received or purchase ticket generated by our trust department, that is American National Bank's trust department, indicating that an asset of $3 million in a call account at Bahamas Commonwealth Bank was to be set up. There is a code on here which is a 7, designating that the asset has not been received by the bank.

Q Does that relate to your knowledge to the 30,000 shares and the warrants, et cetera of the Vencap securities that were ultimately received at the end of February, 1973?

A No, it does not. It relates to a call account

at Bahamas Commonwealth Bank.

Q Is it the purpose of this document to say in effect that you have title to and you own those shares and those warrants as soon as they get to the BCB?

A No. It does not.

Q What is the purpose of that document?

A Of this particular document?

Q Yes.

A This was again mistakenly set up on our records. This was the ticket used to establish that call account on our records for the IIT fund.

Q I would like to show you, sir, one final document which is a telegram bearing the date of apparently November 27, 1972 which states:

"At request of IIT Management, we would instruct you to delete from our records purchase order 05224P-$3 million Vencap."

Do you recall at any time that a document was sent or received, the circumstances thereof?

A As to why it would be deleted?

Q Yes.

A To my knowledge, no.

Q Do you have any idea to what the telegram refers?

A This would have been the result of phone calls made by operations center requesting the deletion of the establishment of the call account on our records.

Q The mistake you told us about?

A That is correct.

MR. BROWN: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. MORSE:

Q I show you Plaintiffs' Exhibit 26 in evidence and ask you whether the $4 million was sent from your bank pursuant to that ticket?

A Yes, it was.

MR. MORSE: No further questions.

MR. ANDERSON: Your Honor, Mr. Rand has requested that all of the original bank records be returned and with your permission and with the permission of counsel for the defendants, we will make copies of those, remove the exhibit tickets from the originals and send them back to Mr. Rand.

MR. BROWN: Will you favor us with copies of the exhibits?

MR. ANDERSON: Yes, we will definitely send copies.

You have two of them. Do you want us to handle

for you, too?

MR. BROWN: I think it would be helpful.

THE COURT: I take it there is no objection to that.

All right, are we finished for today?

MR. ANDERSON: Yes, your Honor, and so the course is clear, the plaintiffs will have no further evidence to offer in support of this application for preliminary injunction.

THE COURT: All right.

I take it, Mr. Oram, you will want to go forward tomorrow morning?

MR. ORAN: Yes, your Honor.

THE COURT: 10:15.

(Adjourned to June 18, 1974 at 10:15 a.m.).

Service of 2 copies of Appendices (2 vol.) and
1 copy of exhibit volume (7 vols.) admitted
this 13th day of November, 1974

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